

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION

4 UNITED STATES OF AMERICA | DOCKET 4:20-CR-318

5 VS. | SEPTEMBER 27, 2022

6 KEITH TODD ASHLEY | 8:27 A.M.

7 -----
8 VOLUME 2 OF 8, PAGES 276 THROUGH 539
9 REPORTER'S TRANSCRIPT OF JURY TRIAL

10 BEFORE THE HONORABLE AMOS L. MAZZANT, III,
11 UNITED STATES DISTRICT JUDGE, AND A JURY
12 -----
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32 PROCEEDINGS RECORDED USING MECHANICAL STENOGRAPHY;
33 TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.
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1 (Open court, defendant and jury not present.)

2 THE COURT: Please be seated.

3 I think we have all the jury here, but I did want
4 to raise an issue. Ms. Conrad was notified last night by
5 Juror Number 10 asking to be released. Juror Number 10, I
6 think, indicated to her that -- she, I think, is a
7 hairdresser and she thought that her employer would pay her
8 while she was doing jury service, but they won't because
9 she gets paid for her jury time. And so she was asking to
10 be released.

11 Any thoughts? I'm inclined not to. I'm just
12 saying -- but I wanted to hear from the parties. I mean, I
13 made it very clear when I gave the example of the
14 anniversary plans; and there were other people that have
15 commission-based work. If she had voiced that issue, I
16 would have probably let her -- I'm sure I would have let
17 her go just like we let the others go based on hardship,
18 but typically I don't do it once -- that's why I said raise
19 it now.

20 But, you know, if both sides agree to do
21 something, then I'm always open to it but --

22 MS. RATTAN: May I talk to Mr. Whalen?

23 THE COURT: Yes, please.

24 (Off-the-record discussion among counsel.)

25 MS. RATTAN: Thank you, your Honor. We've

1 conferred.

2 THE COURT: Yes. And what would you like to do?

3 MS. RATTAN: It is the government's belief that
4 just based on the possible length of the trial and that we
5 only have two alternates, that we can't release her at this
6 point.

7 MR. WHALEN: Your Honor, we would be okay with
8 releasing her. I'm optimistic that we have two alternates
9 and we could make it through. And I think she learned
10 about -- she learned about it at the end, you know,
11 probably when she got home and then realized she couldn't;
12 so she didn't know to bring it up. It wasn't an issue
13 until then.

14 THE COURT: I understand. Again, unless there is
15 an agreement, I am not going to release the juror. I made
16 it very clear that they had to speak up then on any issues
17 with hardship so -- that doesn't mean this won't become a
18 problem, but hopefully the juror will continue to show up.

19 What I will do is I'll just have Ms. Conrad at the
20 break go and indicate to her that she needs to -- I'm not
21 going to release her.

22 Okay. So I just also have been notified that the
23 city had a waterline break, and so we do not have any water
24 in the courthouse. So we're going to go ahead and -- we'll
25 go ahead and start. We'll see what we have -- which means

1 there will be no bathroom availability in the courthouse.
2 So we'll go ahead and start, and then we'll see where we're
3 at at the break if they have fixed it.

4 MR. WHALEN: And, your Honor, I just want to put
5 on the record that since -- Juror Number 10, if she's the
6 hairdresser, I believe she was Juror Number 29; and that
7 was somebody that we had an issue with, we would have used
8 a strike on. And so I just want to make clear for the
9 record that we're not opposed to letting her go and also
10 just tying those two pieces together. That's somebody we
11 would have used a strike on, so we will re-urge our motion.

12 THE COURT: Well, I understand and, again, we'll
13 see where things -- how things pan out but, again, I'm not
14 going to release her at this time at least so -- whether we
15 revisit it later, we'll see, but -- and I don't have a
16 problem -- well, we'll just deal with that later. But I
17 mean, currently at the break I'll have my staff talk to her
18 and let her know that I'm not releasing her at this time.

19 Okay. Anything else?

20 MS. RATTAN: Yes, your Honor, a couple of things.
21 Back to the Robert Greening motion *in limine*. We've
22 included a summary of Mr. Greening's testimony in our
23 opening statement. We don't believe that the motion *in*
24 *limine* -- well, it's been granted; but it's our position
25 that his testimony is relevant and admissible. The whole

1 issue there was the fact that Mr. Greening is a lawyer who
2 previously represented the defendant on a minor car
3 accident.

4 THE COURT: Yes, and I understand -- Mr. Whalen, I
5 know -- I'm going to overrule any objection you have to
6 that testimony. I mean, it is -- he's not in the
7 capacity -- this idea that just because they were at one
8 time his lawyer, that extends some privilege to any
9 communication, that's not the way that the law works.

10 I mean, in terms of whether the evidence is
11 admissible is all whether there was an attorney-client
12 relationship that was existing for what was happening. And
13 that's clearly not the case based on what the government
14 has represented, so I'm denying that request.

15 MR. WHALEN: And, your Honor, just for the record
16 purposes, is it -- since you're denying that, do I need to
17 object to his testimony each time he's asked a question; or
18 will the Court consider that I've preserved that objection
19 as is it relates to his testimony and any exhibits related
20 to his testimony?

21 THE COURT: Well, what I would say is object the
22 first time; and then if you want to ask for a running
23 objection, I'll grant that --

24 MR. WHALEN: Thank you, your Honor.

25 THE COURT: Okay.

1 MS. RATTAN: And the second issue, yesterday the
2 Court twice asked how the government would propose to go
3 forward on Counts 17 and 18. With the Court's permission,
4 we'd like to move forward only on Count 18 and submit the
5 (j), at the issue, the 924(c)(j) issue, as a special issue
6 in the jury instructions.

7 THE COURT: Okay. So the government is asking to
8 essentially dismiss Count 17?

9 MS. RATTAN: Yes, your Honor.

10 THE COURT: Okay.

11 MS. RATTAN: We believe it's a lesser included
12 offense of Count 18 and would be able to be submitted that
13 way to the jury.

14 THE COURT: I agree.

15 I assume there is no opposition from the defense.

16 MR. WHALEN: No, your Honor. I think that's the
17 proper way to do it. And you had asked me about whether to
18 do it as a special issue, as an element. I agree it would
19 be cleaner to do it as a special issue.

20 THE COURT: I agree, so I think we're all in
21 agreement.

22 Okay. So for my preliminary instructions I won't
23 mention Count 17. It will just be Count 18.

24 MS. RATTAN: Great.

25 THE COURT: Okay. Anything else?

1 MS. RATTAN: No, your Honor.

2 THE COURT: Let's go ahead and bring the jury in,
3 then.

4 THE COURT SECURITY OFFICER: One of the jurors
5 just went out to their car. They forgot their glasses.

6 THE COURT: Okay.

7 And then I would just say if for some reason we
8 don't get the water restored, that could impact our ability
9 to continue today, having no restroom abilities in the
10 building.

11 MS. RATTAN: Your Honor, May we approach to be
12 heard on the issue of scheduling?

13 THE COURT: Yes.

14 (Sidebar conference, off the record.)

15 (The jury enters the courtroom, 8:39 a.m.)

16 THE COURT: Please be seated.

17 Okay. So, ladies and gentlemen, I just want to
18 advise you that, if you haven't already heard, that the
19 city of Sherman has had a waterline break; and so I'm
20 having my staff figure out is it contained just to
21 downtown, is it beyond downtown. We're going to begin, and
22 then we'll see what we do.

23 So at the current stage, if the whole city isn't
24 out of water, just downtown, we'll probably just take a
25 longer break, let everyone go and have a little break. It

1 will delay things, but at least we can try to still proceed
2 but -- unless the whole city is out, and then we'll address
3 that at the break. But I'm aware of it. We're looking at
4 what our options are.

5 Okay. Welcome back. So, members of the jury, now
6 that you have been sworn, I'm going to give you some
7 preliminary instructions to guide you in your participation
8 in the trial.

9 It will be your duty to find from the evidence
10 what the facts are. You and you alone will be the judges
11 of the facts. You will then have to apply to those facts
12 the law as the Court will give it to you. You must follow
13 that law whether you agree with it or not.

14 Nothing the Court may say or do during the course
15 of the trial is intended to indicate, or should be taken by
16 you as indicating, what your verdict should be.

17 The evidence from which you will find the facts
18 will consist of the testimony of witnesses, documents, and
19 other items received into the record as exhibits and any
20 facts the lawyers agree to or stipulate to or that the
21 Court instructs you to so find.

22 There are certain things that are not evidence and
23 must not be considered by you. I will list them now.

24 First, statements, arguments, and questions by the
25 lawyers are not evidence.

1 Second, objections to questions are not evidence.
2 Lawyers have an obligation to their clients to make
3 objections when they believe evidence being offered is
4 improper under the rules of evidence. You should not be
5 influenced by the objection or by the Court's ruling on the
6 objection. If the objection is sustained, ignore the
7 question. If the objection is overruled, treat the answer
8 like any other. If you are instructed that some item of
9 evidence is received for a limited purpose only, you must
10 follow that instruction as well.

11 Third, testimony that the Court has excluded or
12 told you to disregard is not evidence and must not be
13 considered by you.

14 And, fourth, anything you have seen, heard, or
15 read outside of the courtroom is not evidence and must be
16 disregarded. You are to decide the case solely on the
17 evidence presented here in the courtroom.

18 Now, as mentioned earlier during the *voir dire*
19 process, there are two kinds of evidence, direct and
20 circumstantial. Direct evidence is direct proof of a fact,
21 such as the testimony of an eyewitness. Circumstantial
22 evidence is proof of facts from which you may infer or
23 conclude that other facts exist. I will give you further
24 instructions on these as well as other matters at the end
25 of the case, but keep in mind that you may consider both

1 kinds of evidence.

2 It will be up to you to decide which witnesses to
3 believe, which witnesses not to believe, and how much of
4 any witness' testimony to accept or reject. I will give
5 you some guidelines for determining the credibility of
6 witnesses at the end of the case.

7 Now, as you already know, this is a criminal case.
8 There are three basic rules about a criminal case that you
9 must keep in mind.

10 First, the defendant is presumed innocent until
11 proven guilty. The Indictment brought by the government
12 against the defendant is only an accusation, nothing more.
13 It is not proof of guilt or anything else. The defendant,
14 therefore, starts out with a clean slate.

15 Second, the burden of proof is on the government
16 until the very end of the case. The defendant has no
17 burden to prove his innocence or to present any evidence or
18 even to testify. Since the defendant has the right to
19 remain silent, the law prohibits you from arriving at your
20 verdict by considering that the defendant may not have
21 testified.

22 And, third, the government must prove the
23 defendant's guilt beyond a reasonable doubt. I will give
24 you further instructions on this point later, but bear in
25 mind that in this respect a criminal case is different than

1 a civil case.

2 Now, in this case the defendant is charged with
3 multiple offenses, called counts, as set forth in the
4 Fourth Superseding Indictment. I will give you detailed
5 instructions on the law at the end of the case, and those
6 instructions will control your deliberations and decision.
7 But in order to help you follow the evidence, I will give
8 you a brief summary of the elements for each offense that
9 the government must prove beyond a reasonable doubt to make
10 its case.

11 So, Counts 1 through 6, Counts 9 through 14, and
12 Count 20 are wire fraud or attempted wire fraud. The
13 defendant is charged in Counts 1 through 6, 9 through 14,
14 and Count 20 of the Fourth Superseding Indictment with the
15 offense of wire fraud and attempted wire fraud, in
16 violation of Title 18 United States Code, Section 1343.
17 Section 1343 makes it a crime for anyone to use interstate
18 wire communications in carrying out a scheme to defraud.

19 For you to find the defendant guilty of these
20 crimes, you must be convinced that the government has
21 proved each of the following beyond a reasonable doubt:

22 First, that the defendant knowingly devised or
23 intended to devise any scheme to defraud. The scheme
24 charged in this case is a scheme in which the defendant
25 solicited money from victim investors for purported

1 investments, when in reality, the funds were used for
2 personal enrichment and other nonbusiness purposes.

3 Second, that the scheme to defraud employed false
4 material representations, false material pretenses, or
5 false material promises.

6 Third, that the defendant transmitted, or caused
7 to be transmitted, by way of wire communications, in
8 interstate commerce, any writing, sign, signal, picture, or
9 sound, for the purpose of executing such scheme.

10 And, fourth, that the defendant acted with a
11 specific intent to defraud.

12 Counts 15 and 16 charge mail fraud and attempted
13 mail fraud.

14 The defendant in this case is charged in Counts 15
15 and 16 of the Fourth Superseding Indictment with the
16 offense of mail fraud and attempted mail fraud, in
17 violation of Title 18 United States Code, Section 1341.
18 Section 1341 makes it a crime for anyone to use the mails,
19 including any private or commercial interstate carrier, in
20 carrying out a scheme to defraud.

21 For you to find the defendant guilty of these
22 crimes, you must be convinced that the government proved
23 each of the following beyond a reasonable doubt:

24 First, that the defendant knowingly devised, or
25 intended to devise, a scheme to defraud. Here, the

1 defendant is charged with a scheme to obtain money by means
2 of false and fraudulent pretenses and representations.

3 Second, that the scheme to defraud employed false
4 material representations, false material pretenses, or
5 false material promises.

6 Third, that the defendant mailed something or
7 caused something to be sent and/or delivered through the
8 U.S. Postal Service or a private or commercial interstate
9 carrier for the purpose of executing such scheme or
10 attempting to do so.

11 And, fourth, that the defendant acted with a
12 specific intent to defraud.

13 Count 8 (*sic*), carrying or discharging a firearm
14 during a crime of violence or possession of a firearm in
15 furtherance of a crime of violence.

16 The defendant is charged in Count 18 of the Fourth
17 Superseding Indictment with the offense of carrying or
18 discharging a firearm during a crime of violence or
19 possession of a firearm in furtherance of a crime of
20 violence under Title 18 United States Code,
21 Section 924(c)(1) and 924(j). Section 924(c) makes it a
22 crime for anyone to knowingly use or carry a firearm during
23 and in relation to a crime of violence or to knowingly
24 possess a firearm in furtherance of a crime of violence.
25 Section 924(j) makes it a crime for anyone, when in the

1 course of a violation of Subsection (c), causes the death
2 of a person through the use of a firearm.

3 For you to find the defendant guilty of this crime
4 under Subsection (c), you must be convinced that the
5 government has proven each of the following beyond a
6 reasonable doubt:

7 First, that the defendant committed the crime of
8 affecting commerce by robbery, in violation of Title 18
9 United States Code, Section 1951(a), which I will explain
10 in a moment. I instruct you that affecting commerce by
11 robbery is a crime of violence.

12 And, second, that the defendant knowingly used or
13 carried a firearm during and in relation to the defendant's
14 commission of the crime of affecting commerce by robbery,
15 or that the defendant knowingly possessed a firearm and
16 that possession was in furtherance of the defendant's
17 commission of the crime of affecting commerce by robbery.

18 Title 18 United States Code, Section 1951(a),
19 makes it a crime for anyone to obstruct, delay, or affect
20 commerce by robbery.

21 "Robbery" means the unlawful taking or obtaining
22 of or attempting or conspiring to unlawfully take or obtain
23 personal property from the person or in the presence of
24 another, against his will, by means of actual or threatened
25 force or violence or fear of injury, immediate or future,

1 to his person or property or anyone in his company at the
2 time of the taking or obtaining.

3 For you to find that the defendant committed this
4 crime, you must be convinced that the government has proved
5 each of the following beyond a reasonable doubt:

6 First, that the defendant unlawfully obtained or
7 attempted to obtain personal property from a person or in
8 his presence, against his will;

9 Second, that the defendant did so by means of
10 actual or threatened force or violence or fear of injury,
11 immediate or future, to his person or property, property in
12 his custody or possession, or anyone in his company at the
13 time of the taking or obtaining; and,

14 Third, that the defendant's conduct in any way or
15 degree obstructed, delayed, or affected commerce or the
16 movement of any article or commodity in commerce.

17 Title 18 United States Code, Section 111(a) makes
18 it a crime for anyone to murder another human being with
19 premeditation in the commission of or attempted commission
20 of certain felonies.

21 For you to find the defendant committed this
22 crime, you must be convinced that the government proved
23 each of the following beyond a reasonable doubt:

24 First, that the defendant unlawfully killed J.S.;

25 Second, that the defendant killed J.S. with malice

1 aforethought;

2 Third, that the killing was premeditated; and,

3 Fourth, that the killing took place within the
4 territorial jurisdiction of the United States.

5 Count 19, bank fraud (*sic*) or attempted bank
6 theft.

7 The defendant in this case is charged in Count 19
8 of the Fourth Superseding Indictment with the offense of
9 bank theft and/or attempted bank theft under Title 18
10 United States Code, Section 2113. Section 2113 makes it a
11 crime for anyone to take and carry away, with the intent to
12 steal or purloin, any property or money or any other thing
13 of value exceeding \$1,000 belonging to or in the care,
14 custody, control, management, or possession of any
15 federally-insured bank.

16 For you to find the defendant guilty of this
17 crime, you must be convinced that the government proved
18 each of the following beyond a reasonable doubt:

19 First, that the defendant did or did attempt to
20 take and carry away money and property belonging in the
21 care, custody, control, management, possession of Texas
22 Capital Bank;

23 Second, that at that time Texas Capital Bank had
24 its deposits insured by the Federal Deposit Insurance
25 Corporation;

1 Third, that the defendant did or did attempt to
2 take and carry away such money and property with the intent
3 to steal; and,

4 Fourth, that such money and property exceeded
5 \$1,000 in value.

6 Now, I know I went through all of these elements.
7 I will just explain further that when I give you my final
8 instructions which will control your deliberations, you
9 will each have a copy of the charge which will set out all
10 of the elements for each of these counts. So you don't
11 have to remember those. It's really just to give you an
12 overview. I just want you to understand that at the end of
13 the day when we give you the final instructions, you will
14 each have a copy of that to take back with you which will
15 outline all of these again.

16 Now let me give you a few words about your conduct
17 as jurors.

18 During the course of the trial, do not speak with
19 any witness or with the defendant or any of the lawyers in
20 the case. Please do not talk with them about any subject
21 at all. You may be unaware of the identity of everyone
22 connected with the case. Therefore, in order to avoid even
23 the appearance of impropriety, do not engage in any
24 conversation with anyone in or about the courtroom or the
25 courthouse. It is best that you remain in the jury room

1 during breaks in the trial and do not linger in the hall.

2 In addition, during the course of the trial, do
3 not talk about the trial with anyone else -- not your
4 family, not your friends, not the people with whom you
5 work. Also, do not discuss this case among yourselves
6 until I have instructed you on the law and you've gone to
7 the jury room to make your decision at the end of the
8 trial.

9 Otherwise, without realizing it, you may start
10 forming opinions before the trial is over. It is important
11 that you wait until all the evidence is received and you've
12 heard my final instructions on the rules of law before you
13 deliberate among yourselves.

14 Now, you, as jurors, must decide this case based
15 solely on the evidence presented here within the four walls
16 of the courtroom. This means that during the trial you
17 must not conduct any independent research about this case,
18 the matters in this case, and the individuals involved in
19 the case. In other words, you should not consult
20 dictionaries or reference materials; search the Internet,
21 websites, or blogs; or use any other electronic tools to
22 obtain information about this case or to help you decide
23 the case. Please do not try to find out any information
24 from any source outside the confines of what you see and
25 hear in the courtroom.

1 I know that many of you have cell phones and use
2 the Internet and other tools of technology. You must not
3 talk to anyone at any time about this case or use these
4 tools to communicate electronically with anyone about the
5 case. This includes your family and friends. You may not
6 communicate with anyone about the case through any means,
7 including your cell phone, through email, BlackBerry,
8 iPhone, text messaging, Snapchat, Twitter, or through any
9 blog or website, including Facebook, Google, MySpace,
10 LinkedIn, or YouTube. And you may not use any other
11 similar tools of social media, even if I haven't
12 specifically mentioned it here. It seems like new ones are
13 created every day. At least that's what my kids tell me.

14 I expect you will inform me as soon as you become
15 aware of another juror's violation of these instructions.
16 A juror who violates these restrictions jeopardizes the
17 fairness of these proceedings; and a mistrial could result,
18 which would require the entire trial process to start over.

19 Now, if you would like to take notes during the
20 trial, you may do so. On the other hand, you are not
21 required to take notes if you prefer not to do so. Each of
22 you should make your own decision about this.

23 If you decide to take notes, be careful not to get
24 so involved in the note-taking that you become distracted
25 from the ongoing proceedings. Your notes should be used as

1 memory aids. You should not give your notes precedence
2 over your independent recollection of the evidence. If you
3 do not take notes, you should rely upon your own
4 independent recollection of the proceedings; and you should
5 not be unduly influenced by the notes of other jurors.

6 Notes are not entitled to any greater weight than
7 the memory or impression of each juror as to what the
8 testimony may have been. Whether you take notes or not,
9 each of you must form and express your own opinion as to
10 the facts of the case.

11 As you will note, I have an official court
12 reporter -- and she's amazing, does a great, great job --
13 who is making a record of the trial. However, we will not
14 have typewritten transcripts of this record available for
15 your use in reaching a decision.

16 Now let me give you a grief roadmap to help you
17 follow what will happen over the entire course of the
18 trial. First, the government will make an opening
19 statement, which is simply an outline to help you
20 understand the evidence as it is going to be admitted.

21 Next, the defendant's attorney may, but they don't
22 have to, make an opening statement. Remember, opening
23 statements are neither evidence and they're not arguments
24 either.

25 The government will then present its witnesses,

1 and the counsel for the defense may cross-examine them.

2 Following the government's case the defendant may, if he
3 wishes, present evidence whom the government may also
4 cross-examine.

5 If the defendant decides to present evidence, the
6 government has the opportunity to introduce rebuttal
7 evidence.

8 After all the evidence is in, the attorneys will
9 then present their closing arguments to summarize and
10 interpret the evidence for you; and then I will instruct
11 you on the law. After that, you will retire to deliberate
12 to reach your verdict.

13 And now the trial will now begin. I will call
14 upon the government to make their opening statement.

15 MS. RATTAN: Thank you, your Honor. May it please
16 the Court?

17 THE COURT: Yes.

18 MS. RATTAN: Counsel, members of the jury, good
19 morning.

20 As you know from *voir dire* yesterday, this case is
21 the United States of America, the citizens of the United
22 States, versus Keith Todd Ashley, the defendant. And he
23 was introduced to you yesterday.

24 Of course, every criminal defendant has a right to
25 be present at their trial, as is this defendant's right.

1 This is the defendant, Keith Todd Ashley. He's a former
2 police officer, a paramedic, a nurse, a financial advisor,
3 a life insurance agent, and a brewery owner. All of these
4 things combined into a cauldron that allowed him to commit
5 the crimes that you'll hear about in this case. He stole,
6 and he killed. Stealing and killing is what happened in
7 this case, and that's what the evidence will show.

8 Judge Mazzant just went over with you what the
9 charges are. There are multiple counts. But just an
10 overview of the charges: He's been charged with wire
11 fraud, mail fraud, bank theft, and use of a firearm during
12 a crime of violence; and the crime of violence in this case
13 is a robbery.

14 Mail fraud and wire fraud are the federal theft
15 statutes. Essentially, if you lie to someone to get their
16 money and then you use the mail or you use a fax or an
17 email, anything like that, to advance the scheme or to move
18 their money, then that's your federal theft statute, wire
19 fraud, bank fraud.

20 Now, the use of a firearm during a crime of
21 violence, the robbery, you're going to hear evidence about
22 that. Essentially, it's a high-tech, very sophisticated
23 robbery scheme that was devised by the defendant using the
24 special skills he had as a former police officer with
25 specialized training, as a nurse, paramedic, life insurance

1 agent, and financial advisor, the cauldron of skills that
2 he had to ultimately commit this crime; and I'll review
3 with you the specific facts in just a minute.

4 And then bank theft. As part of the robbery and
5 as part of the killing of the victim, James Seegan, he
6 accessed the victim's bank account after he was dead and
7 took \$20,000 of his money. He didn't use it give to the
8 victim's wife, as you would expect a financial advisor
9 would. He didn't use it for anything except selfish
10 reasons. He used it to pay lulling payments to people he
11 was stealing from and for personal gain. That's what he
12 used the money that he stole from the bank for.

13 Wire fraud, mail fraud, bank theft, and use of a
14 firearm during a crime of violence; and that is a robbery.

15 Jay Combs yesterday, when he was talking to you
16 when you were potential jurors during *voir dire*, talked to
17 you about what a Ponzi pyramid scheme is. In this case
18 it's not a complicated scheme. Essentially what happens is
19 I'm the schemer and I approach Special Agent Rennie and I
20 tell him, "I've got a great investment for you." We know
21 each other. We have a rapport, a relationship. He trusts
22 me. And I tell him, "It's a SmartTrust UIT. Here is the
23 percentage return you're going to get, and you can invest
24 in it."

25 Agent Rennie says, "That sounds good. I trust

1 you." He gives me \$20,000. I take his \$20,000; and I'm
2 like SmartTrust, Schmart Trust. The money is going to me.

3 The money goes into my bank account, and you'll
4 see a CPA financial analyst from the FBI will tell you that
5 he tracked the money and exactly where it went. None of
6 the money went to any investments for the victims. It all
7 went to the personal aggrandizement of the defendant. He
8 paid what anyone would pay if they had extra money. He
9 paid on his mortgage. He gambled on -- I'm not sure all of
10 us would do that, but certainly that was something that he
11 did. He paid on his credit cards. Those are the sorts of
12 things that he did.

13 So here's what happens. I've taken Agent Rennie's
14 money and I've told him that I've invested it when I really
15 haven't. So what am I going to do?

16 Enter Jason Fine. I go to Jason Fine. "Jason
17 Fine, I have an investment." I tell him about the same
18 product. Jason Fine says, "I trust you." He gives me his
19 money. He gives me \$20,000.

20 What do I do with his \$20,000? Well, at this
21 point Special Agent Rennie is expecting to get monthly
22 payments as the return on his investment; but we all know I
23 don't have that money because I never made the investment.

24 So what do I do with the money Jason Fine gives
25 me? I don't give it all back to Special Agent Rennie

1 because it's about me, after all, and I have things that I
2 want to do with the money. Instead, I take a portion of
3 the money that I have received, a portion of the \$20,000
4 and I give it and say, "Oh, these are the monthly payments
5 from your investment." I give it to the original investor,
6 and then I steal this investor's money as well and so on.

7 It's a pyramid scheme. It builds on the
8 recruitment of additional investors. So there's no real
9 scheme -- there's no real investment. Money's stolen; it's
10 not invested. It just goes to the schemer, and the
11 investment money is used to pay other investors. And
12 that's basically what the scheme is.

13 So you've got your first investors who pay out the
14 money to the schemer. The schemer steals the money. But
15 then there is a second round of investors where they pay
16 money to the schemer. The schemer pays some of it to the
17 first investors to make the whole thing look real but keeps
18 most of it. That's the pyramid scheme. That's what this
19 defendant was participating in.

20 And really when you listen to the forensic
21 accountant, the CPA that works for the FBI -- his name is
22 Matt Wylie -- he looked in the accounts. He looked at all
23 the evidence. He looked to see whether any of the money
24 was invested, and it wasn't. And he'll tell you where it
25 went and the things that this defendant did with the

1 victims' money.

2 So the victims of the scheme who you will hear
3 about, one of them was James Seegan. Now, James Seegan
4 ultimately became the victim of the defendant's ultimate
5 biggest scheme; and that is, he murdered him. But before
6 he murdered James Seegan to obtain the life insurance money
7 on the policy that he had sold James Seegan, he stole money
8 from James Seegan in a pyramid scheme.

9 And here's -- you're going to see emails between
10 the defendant, James Seegan. You're going to see the money
11 that James Seegan gave to the defendant. And then you'll
12 hear the analysis of the CPA forensic accountant about how
13 the money was actually stolen.

14 So the emails you'll see will be just like you
15 would send any email with a financial advisor. (As read):
16 "Let's just talk over the phone. I was just thinking about
17 putting \$150,000 in the 3 percent grouping for the first
18 contract."

19 And then Ashley replies (as read): "Okay. Let me
20 get some information gathered for you and I'll call you on
21 Monday."

22 These are just sample conversations between Ashley
23 and the victim.

24 So then the victim pays \$150,000. He wires it
25 from his account to the Defendant Ashley 's account. And

1 that's the thing, too, because the defendant is telling the
2 investors that all of this is being overseen by a company
3 where I have a relationship, Parkland.

4 But the money is not going to Parkland. The
5 victims are sending the money to a personal account that's
6 the defendant's account, and you'll hear it's called
7 Ashley's account that he invests at KBKK. That's his
8 account.

9 So then you'll hear the financial analysis; and
10 the CPA will tell you where, in fact, where the \$150,000
11 went. This doesn't account for every penny of it; but for
12 opening statement, I just wanted to give you an idea of
13 what he did with it.

14 You'll hear that \$1,200 of it went to Leonid
15 Shteyngart. And who do you think that's going to be?
16 That's someone he had taken money from before. It's part
17 of the Ponzi scheme.

18 And that's one thing the forensic accountant will
19 tell you that he looks for to see, when a victim gives over
20 money, is a portion of it going to the previous investors;
21 and the answer is yes.

22 So one thing that the accountant sees is that it's
23 going to a previous investor. So, remember, James Seegan's
24 money never went to be invested at all. The accountant
25 didn't find that. What he found was he's paying off

1 another investor, which is the hallmark of a pyramid Ponzi
2 scheme.

3 He took out about \$40,000 of it in cash, just for
4 himself. They were able to trace about \$30,000 to his use
5 of it in casinos; and then he made a big payment to his
6 mortgage, almost \$7,000 to his mortgage. These are just
7 sample things that he did with the money that he got from
8 Mr. Seegan.

9 Now, this is one of the investment victims that
10 you saw Mr. Seegan's money went to; and it follows the same
11 pattern. There's messages between the defendant and the
12 victim, the victim turns over the money, and then there is
13 financial analysis to see what happened to the money.

14 (As read): "Are you interested in a 24-month UIT
15 that I spoke to you about? The percentage of the return
16 for the UIT is 8 to 9 percent." So he's soliciting him to
17 invest his money.

18 And Mr. Shteyngart will tell you that he did.
19 This is just an example. He invested, well, more than
20 \$20,000; but you will see this is an example. He sent
21 \$20,000; and, again, he sent it to Ashley's bank account.
22 It doesn't go to Parkland Securities or anything like that.
23 It goes directly into Defendant Ashley's bank account.

24 And then the forensic accounting analysis, these
25 are just some bullet points about what happened to

1 Mr. Shteyngart's hard-earned money. \$4,181 to James
2 Seegan, lulling payments. Don't worry. Your money's fine.
3 I'm taking money from Leonid Shteyngart, and I'm paying it
4 to another investor. \$50,800 to cash; hits his mortgage
5 again for \$3,000; and then writes a \$1,300 check to
6 himself. These are just samples. That's not a full
7 accounting of the \$20,000; but that's what happened to the
8 money.

9 Another victim. This will be the first person who
10 you hear testify this morning, Mr. Willmon. Mr. Willmon
11 will tell you that he's been married for 50 years. He
12 retired after 40 years' service with the company. He knew
13 the defendant. The defendant was recommended to him by
14 somebody else. And he'll tell you he invested with him.

15 Same thing. You see emails between the two of
16 them. At this point Mr. Willmon is getting a little
17 concerned; and he's telling him that some of the payments
18 are missing, because the victims are supposed to get
19 monthly payments as return on their investment.

20 And so what happens here is -- subject line:
21 "KBKK" -- well, you'll come to hear and know that KBKK is
22 Keith Ashley. (As read): "Hi Keith. Just wanted to
23 update you on our KBKK bank deposits. Here is the deposit
24 dates that indicate that one month it missing."

25 He missed the payment. Was he short on money?

1 Did he need to recruit another investor so he could steal
2 their money and make a payment to Mr. Willmon? What was
3 going on? But Mr. Willmon is calling him on it and saying,
4 hey, I'm missing some money.

5 And so what does the defendant say in response?
6 He says (as read): "I will call you on Monday." We'll
7 talk about it on Monday.

8 But Mr. Willmon will tell you he was having a hard
9 time getting ahold of him; and so finally he emailed him
10 and told him (as read): "What's going on here?"

11 What happened to Mr. Willmon? And again this is
12 just a sample. He invested more than \$20,000. But you'll
13 see an example of \$20,000 that was invested; here it was
14 stolen.

15 The forensic accountant will tell you that \$2,000,
16 approximately, went to James Seegan. Again, you should
17 never see that coming out of somebody's account. That's a
18 red flag hallmark that a Ponzi scheme is going on, when
19 money is coming out of the defendant's personal account and
20 going to someone who thought they were investing.

21 Ooh, we've got another lulling payment to make
22 Mr. Shteyngart feel secure. He takes Denny Willmon's
23 money, and he gives it to two previous investors.

24 Oh, he hits the casino again, over \$2,000.

25 Makes an over \$7,000 payment on his credit cards

1 and \$1,500 to his mortgage.

2 These are victims. It's a pyramid scheme, classic
3 pyramid scheme. Give me your money. Trust me. I will
4 invest it for you. It's not invested; it's stolen. And
5 then the stolen money from later investors is used -- a
6 small portion of it because he kept most of it -- to pay
7 off the previous investors.

8 Robert Greening, another victim. The pattern is
9 the same. Text messages, \$75,000, this is going to be a
10 UIT. (As read): "Am I going to get a statement or shares
11 or something?"

12 (As read): "Oh, yes. It's going to be on your
13 Parkland statement."

14 By the way, it never was, never showed up. Once
15 he gets the money, then he just gives them the lulling
16 payments.

17 The money transfers, a \$75,000 wire.

18 And again bullet points there at the bottom of
19 what happened to the money. What did he do with it? What
20 happened? Did he act as a financial advisor? Did he carry
21 out the trust? Did he invest it? No.

22 About \$6,000 to cash. He pays on his mortgage
23 again. He's a gambler, \$16,000 to gambling. 12,000 to pay
24 on a loan. Oh, and he's got a brewery, a vanity project.
25 He opens a brewery in Allen, Texas. It's called "Nine Band

1 Brewery." It's a brewery/restaurant, as you would imagine.
2 And a lot of money goes to his brewery. He's investing in
3 his brewery with Robert Greening's money and the other
4 people who think that they are investing in a legitimate
5 product.

6 So the defendant has a lot of financial stress.
7 The brewery is not doing well. As I said, it's a vanity
8 project. And you'll hear a financial analysis that it was
9 in the red, doing badly. In 2018 it lost that amount of
10 money. In 2019 it lost that amount of money. And in
11 January to June of 2020 it lost that amount of money. It
12 was in the red, as they say. He could not steal enough
13 from these investors to make his brewery go.

14 And in February, early 2020, he's got monthly
15 obligations, not including his \$30,000 credit cards that
16 he's built up, but he's got monthly obligations of \$30,000.
17 So to stay afloat, every month he has to come up with
18 \$30,000. So he has significant financial stress. The
19 brewery's going under; and he's got \$30,000 a month in
20 payments.

21 So now we get into the scheme. We've talked about
22 the stealing. Now let's talk about the killing. And the
23 killing has everything to do with stealing. It's robbing.
24 It's all wrapped up in a cauldron together.

25 So here's how he accomplishes killing James

1 Seegan. Here's the plan. In January and February of 2016
2 Ashley sells James Seegan a \$2 million life insurance
3 policy. He's his life insurance agent. He knows he has
4 this policy.

5 Then flash-forward a few years. In April of 2019
6 Ashley becomes the independent executor of James Seegan's
7 will and trust. Mr. Seegan trusts him. He trusts him to
8 take care of his finances. He doesn't know what you know
9 from those previous screens, and that is that he was
10 actually stealing from him and taking all of his money.
11 Mr. Seegan trusts him. He makes the defendant the
12 independent executor of his will and trust.

13 Then in January, January 29th of 2020, James
14 Seegan's trust becomes the beneficiary of the \$2 million
15 life policy. Okay?

16 So think about this. If James Seegan dies,
17 \$2 million is going to go to his trust. The \$2 million on
18 his death goes to his trust. But you go back to April of
19 2019. Who's going to be in charge of the trust? It's
20 going to be this defendant. \$2 million. He'll be in
21 charge of the trust, just him, nobody else.

22 You'll hear there was another life insurance
23 policy and James Seegan's wife, Dida -- and she'll
24 testify -- was the beneficiary of that life insurance
25 policy, a \$400,000 life insurance policy.

1 So on James Seegan's death, this defendant's
2 approach to Dida was, "You've been well cared for. Here is
3 a \$400,000 life insurance policy just for you and your son.
4 You all will be taken care of."

5 But what really was there? There was 2.4 million
6 in two policies because the defendant was going to be in
7 control of the \$2 million life policy. It was going to be
8 his piggy bank. James Seegan's will and trust was going to
9 become this defendant's piggy bank, and he wasn't going to
10 be in the red anymore with his brewery. Stress, financial
11 stress.

12 He sets it up right here, a \$2 million life
13 policy. He's known for a long time Mr. Seegan had it. He
14 becomes the independent executor of the will and trust.
15 And then when James Seegan signs agreeing to allow this
16 trust to become the beneficiary of the \$2 million life
17 insurance policy, Mr. Seegan doesn't know it; but he's
18 signing his own death warrant because the defendant has a
19 plan in place and that's to kill Mr. Seegan to get control
20 over the \$2 million.

21 So as we say, upon James Seegan's death, Ashley
22 controls everything; and the paperwork shows that.

23 Three weeks later -- look at that last date right
24 there, January 29th of 2020. That's when the trust becomes
25 the beneficiary and Ashley controls the trust, three weeks

1 later. What are the events of January 19th through
2 2020 (*sic*)? It's a robbery by this defendant with death
3 resulting. That seems like complicated language maybe,
4 "robbery with death resulting." Let's call it what it is.
5 He murdered him.

6 But it really is a sophisticated kind of high-tech
7 robbery that's been a long time in the planning. And when
8 you think about the robbery, there is the obvious victim of
9 the robbery, of course, because he took Mr. Seegan's life;
10 and, of course, Mr. Seegan's wife and his son, they are
11 victims of the robbery as well.

12 But what kind of robbery is this? When we hear
13 the term "robbery," just in everyday life, we think of a
14 stickup and a grab-and-go. You run into 7-Eleven, you pull
15 out a gun and you say, "Give me your money" and take the
16 money. That's what we think of when we think of a robbery.

17 But you have to remember here you're dealing with
18 a former police officer, a financial advisor, a paramedic,
19 a nurse. Special skills. So this is a special type of
20 robbery.

21 And here's how he does it. He sold Mr. Seegan
22 this life insurance policy; and he's told him that to
23 update the policy, he's going to have to continue to draw
24 blood. Don't worry about it. I have special skills at
25 drawing blood because I'm a nurse.

1 And what you'll hear is that Mr. Seegan, on his
2 calendar on the day that he's murdered -- it's his
3 iCalendar, his electronic calendar -- it says, "9:00 a.m.,
4 Keith, blood." 9:00 a.m. James Seegan's iCalendar says he
5 has an appointment at 9:00 a.m. and it says, "Keith blood."

6 Now, is anyone going to get on the stand and tell
7 you that the defendant said, "Hey, I'm coming over in
8 relation to the life insurance policy to draw your blood"?
9 No, nobody's going to say that. Of course Mr. Seegan is
10 deceased. But what we do is we use common sense, and we
11 make reasonable inferences based on the evidence.

12 On that date Keith was coming over and he was
13 going to draw blood, probably with the ruse that it's based
14 on the insurance policy.

15 The Google Nest camera -- Mr. Combs asked you
16 about any knowledge that you might have about recording
17 systems at your home yesterday during *voir dire*. Well,
18 Mr. Seegan did have a Google Nest camera; and it shows that
19 Ashley arrived right on time, 9:31 a.m. The calendar said
20 he was going to get there at 9:00, and he was there at
21 9:31 a.m.

22 At 9:33 a.m. the analysis that law enforcement
23 does on Mr. Seegan's phone shows that his last step was
24 logged at 9:33 a.m.

25 And at 9:42 a.m. the final call was answered on

1 Mr. Seegan's phone.

2 So after he's found dead, analysis is done on the
3 victim's phone and his last step was at 9:33 a.m. that
4 morning and the final call was answered at 9:42 a.m. that
5 morning. Google Nest shows who's at the house. It's that
6 defendant.

7 10:15 a.m. there's a Google Nest camera in the
8 garage; and it records a sound, a loud sound, a firearm
9 sound. It records that sound at 10:15 a.m. And this
10 sound, the loud sound that sounds like a firearm going off,
11 is recorded and the law enforcement listened to it on
12 Mr. Seegan's phone and they have their recording of them
13 listening to it.

14 At 10:17 a.m. a document is printed on the printer
15 in James Seegan's office at his house. 10:15, loud sound,
16 sounds like a firearm. 10:17 a.m., a document is printed
17 on the printer.

18 Well, there at the crime scene, where Mr. Seegan
19 is found dead with a gunshot wound to his head in his
20 office, is a suicide note. It's a typewritten suicide note
21 to his wife. It's about two and a half lines, very short.
22 (As read): "Dear Dida, I'm sad. I committed suicide.
23 Call my dearest friend Keith Ashley. Here is his phone
24 number, and he'll help you." That's the suicide note,
25 printed out. And at 10:17 a.m. something printed on the

1 printer in Mr. Seegan's office.

2 10:21 a.m. Google Nest captures this defendant
3 leaving. You'll see the video. He leaves James Seegan's
4 house at 10:21 a.m.

5 Then throughout the day there are text messages
6 where the defendant, Keith Ashley, is texting the victim.
7 He tries to text him; it's unread. He calls; there's no
8 answer. This is 10:24, 10:33, 10:34.

9 Then the defendant goes back to the victim's
10 house. We don't know why. Did he forget something? Is he
11 returning to the scene of the crime? Did he leave the band
12 on his arm? What happened? He goes back to his house, is
13 there very quickly, and then leaves again.

14 Then you'll see throughout the day he continues to
15 try to call him, texts and calls and texts and calls.
16 These are unresponded to and unanswered.

17 Then James Seegan was a late-life parent, and he
18 had left his job and was the stay-at-home dad taking care
19 of their son. He was supposed to pick up their son at
20 school that day. He never showed up. And so, of course,
21 the school called the mom.

22 The mom went and picked up their son; and their
23 6-year-old son and James Seegan's wife, Dida, arrived at
24 the house. What did they find? They found this
25 defendant's handiwork. He had murdered their husband and

1 father for the life insurance policy that he would solely
2 be in charge of and in control of.

3 They entered the house. They thought something
4 might be wrong because he had never picked him up and they
5 saw his car in the garage. They held hands and walked
6 upstairs, and they saw James Seegan dead.

7 They didn't know whether he was dead or not. They
8 saw something in the room that looked unusual, so they
9 called 9-1-1 and paramedics and police responded.

10 So the paramedics get there. Captain Patrick King
11 is a first responder with the Carrollton Police Department.
12 He'll tell you that he entered, he saw the room, and he
13 said this scene doesn't look right. Something is not right
14 here. He believed that it looked like a staged suicide;
15 and, in fact, the evidence shows that that's what it was.

16 And who would be in the perfect position to stage
17 a suicide? Who has those kind of skills and knowledge?
18 It's this defendant, Keith Todd Ashley.

19 And what do we know? He's dead from a gunshot
20 wound to the head. The firearm -- of course use of a
21 firearm, it's a federal crime to use a firearm during a
22 robbery.

23 And here's what we found in the Seegan home.
24 There was a gun found in James Seegan's wrong hand. It's
25 in his left hand, that his wife will tell you he's not

1 left-handed. He's right-handed.

2 You put it in the wrong hand.

3 Seegan has no firearms. They're not allowed in
4 the home. He's a conscientious objector to firearms. He
5 doesn't even allow their son to have toy guns. There are
6 no firearms, nothing related to firearms in the Seegans'
7 home except one firearm, and that's the firearm that's in
8 the wrong hand in the victim's -- kind of on his leg and
9 his lap. Nothing related to firearms in the house.

10 Law enforcement goes a couple of months later and
11 they search Ashley's home and they found an empty gun case
12 that could house the firearm that was found at the Seegan
13 house. They find multiple firearms.

14 You'll see on the Google Nest that he enters the
15 Seegans' home with a backpack. Well, when the police come
16 over to the house they find that he, in fact, keeps a gun
17 in his backpack. They find a backpack with a gun found in
18 it. The same caliber ammunition is found as was found at
19 the Seegans' home that was used to kill Mr. Seegan. And we
20 know, of course, that Ashley has experience with firearms.
21 He's a former police officer.

22 Then the ATF gets involved, and they trace the
23 last known transaction related to that firearm. It was
24 5 miles from the defendant's house. Can anyone say that
25 that was the defendant, Keith Ashley's firearm? No. But

1 the last registered owner of that firearm is within 5 miles
2 of where Ashley's house is.

3 So on February 20th, next day, 2020, Ashley calls
4 Midland life; and he says that James Seegan passed away
5 last night. He's giving the death notification.

6 He calls again on that same day and he says, "Lock
7 the account down. We don't want any funny business or
8 hanky-panky. Make sure nobody else can access this account
9 that has to do with the life insurance policy."

10 Then as part of the scheme, the next day James --
11 the defendant, Ashley, accesses Mr. Seegan's bank account.
12 Mr. Seegan is dead. Gunshot wound to the head. He's been
13 murdered. And what happens is Ashley attempts to transfer
14 \$20,000 from the bank account; but it's a dual factor
15 authentication. He needs Mr. Seegan's identification
16 information.

17 So he goes to the Seegans' house and he meets with
18 the wife and the son and he says, "I'm going to need the
19 phone to be able to help you out." And Mr. Seegan's wife
20 sees him erasing some text messages while he's in there and
21 she says, "What are you doing?"

22 "Oh, don't worry. I just don't want anyone to see
23 these sad messages."

24 But what does he do while he's got the phone?
25 Dual factor authentication. Now he has the second number

1 that he needs. He accesses the bank account, and he
2 obtains \$20,000.

3 So back to the financial tracing. What does he do
4 with this \$20,000 that he's stolen? Well, we've still got
5 the pyramid scheme problem going on. So he's going to put
6 \$1,500 of it to Denny Willmon; \$1,600 to Leonid Shteyngart;
7 \$9,000 of it to his brewery that's going under; college
8 tuition; credit cards; cash. This is \$20,000 that he takes
9 out of James Seegan's bank account after James Seegan is
10 dead.

11 Now, what you're going to hear is that the medical
12 examiner in this case originally fell for the scheme and
13 said that this was a suicide; but it's not. The toxicology
14 report in the medical examiner's findings showed that there
15 was etomidate in James Seegan's blood. And the records and
16 evidence in this case will show that this defendant knows
17 what etomidate is.

18 When his home was searched, there were records
19 there showing that he had been tested on etomidate. He's a
20 paramedic. He's a nurse. And about two months before
21 Mr. Seegan was murdered, he, this defendant, where he
22 worked at the hospital, City Hospital, White Rock City
23 Hospital, had access on December 17th of 2019, the records
24 show, to this very drug, etomidate.

25 Now, etomidate, you'll hear from an expert

1 witness, is a fast-acting sedative. You remember the
2 iPhone entry, "Keith 9:00 a.m. blood"? It appears that
3 what the defendant did was inject Mr. Seegan with
4 etomidate. It's a fast-in, fast-out substance that renders
5 somebody very quickly unable to do anything. It knocks
6 them out very quickly.

7 There is etomidate in James Seegan's blood, and
8 that is in the autopsy report. The defendant wants to know
9 does the medical examiner, do the police know what I did?
10 Am I going to get caught?

11 So he has an employee at the brewery order a copy
12 of the autopsy. He doesn't order it himself. A man named
13 Paul Villareal orders a copy of the autopsy, and a copy of
14 James Seegan's autopsy is found when the defendant's house
15 is searched.

16 The medical examiner mails to James Seegan the
17 autopsy report to Paul Villareal. The toxicology shows
18 that someone who has unique knowledge and unique
19 understanding about etomidate has the toxicology report at
20 their house.

21 So not everything was able to be recovered from
22 the defendant's phone when it was searched, but these are
23 some Google searches that the defendant ran:

24 "Can a Nest camera indoor detect sound if no
25 motion?" Why would he be running that? Remember the

1 Google Nest camera detected sound at 10:15 a.m. on
2 February 19th of 2020, a loud sound that sounded like a
3 firearm. This is what is a Google search that the
4 defendant does in April of 2020.

5 In May of 2020 he's googling "Manslaughter
6 Deferred Adjudication Texas," "Manslaughter Jail Time."
7 This is what he's googling.

8 September of 2020, "Can manner of death be changed
9 by medical examiner," "Can police overrule medical
10 examiner."

11 These are undated, but he was looking up the time
12 of death calculator. How can you find out if a case is
13 going to grand jury?

14 You will also hear that he googled four letters,
15 "QTOF," Q-T-O-F. What is that? When we see it, it doesn't
16 really mean anything. But it's very interesting because
17 the defendant googled QTOF and QTOF is the exact
18 sophisticated test that SWIFS, the medical examiner in
19 Dallas, used to evaluate James Seegan's blood and find the
20 etomidate.

21 So he wants to know, when he sees the toxicology
22 report, how did they know? How did they catch me? And
23 he's googling "QTOF," using his specialized knowledge once
24 again to try to figure it out.

25 He has information about etomidate. The medical

1 examiner's report shows etomidate.

2 This is an overview of the case. So basically
3 what you have is stealing and killing, just like I said.
4 The killing was part of a robbery. Don't be fooled just
5 because he didn't walk into a 7-Eleven and use a gun to
6 stick somebody up. This is a robbery, no doubt, a robbery
7 that resulted in death.

8 The victims of the robbery were, of course, James
9 Seegan who lost his life, his family who lost a husband and
10 a father, but also Midland life insurance company. Midland
11 life insurance company really was the intended victim here
12 for the defendant, because just like when you walk into a
13 7-Eleven as a robber, if I am the robber and I shoot and
14 kill the person behind the counter, I'm not getting one
15 penny of their money. I'm taking Southland Corporation's
16 money. I'm taking 7-Eleven's money.

17 So when James Seegan was killed on February 19th
18 of 2020, it was to get the control of the trust, yes; but
19 it was about the payout, the \$2 million payout by Midland
20 life insurance company.

21 And he didn't stop robbing there. What did he do?
22 Within 48 hours of murdering James Seegan, he was on his
23 phone taking \$20,000 out of his account.

24 He's a former police officer, a nurse, a
25 paramedic, a brewery owner -- a brewery that was doing

1 badly -- a financial advisor, and a life insurance agent.
2 It's a cauldron, a cauldron that resulted in crime, killing
3 and stealing.

4 And it will be based on this evidence that we
5 present to you that we ask you in the end to find the
6 defendant guilty of what he is guilty of.

7 Thank you, your Honor.

8 THE COURT: Thank you, Ms. Rattan.

9 Mr. Whalen, would the defense like to make an
10 opening statement?

11 MR. WHALEN: We do, your Honor.

12 Can I grab the podium?

13 THE COURT: Yes, of course.

14 MR. WHALEN: Good morning. Thank you for being
15 here today.

16 And part of opening statement is to give you a
17 roadmap of what the government expects the evidence to
18 show, but also it's our opportunity to explain to you what
19 we think the evidence will show and what it won't show.

20 And I have to tell you, this is a complicated
21 case. They may talk about certain things, but this is
22 complicated. It is probably one of the most complicated
23 cases I've been a part of in my career, because you're
24 going to hear about autopsies, you're going to hear about
25 nursing, you're going to hear about wills and trusts,

1 you're going to hear about science, firearms, ammunition,
2 middle school sound experiments.

3 But I think when you get the law in the case that
4 the judge told you -- and I'm going to go over some of
5 those elements with you -- the evidence that they're going
6 to present you is not proof to you beyond a reasonable
7 doubt of the crimes they have charged him with. I'm going
8 to kind of go through that with you.

9 So let's talk about wire fraud, okay? They talk
10 about a Ponzi scheme and all this stuff, but wire fraud has
11 elements and the judge went over those elements with you,
12 okay? A couple things. There has to be a false statement.
13 But also part of that, it has to be material, okay?

14 And you're going to get instructions about this.
15 You're going to -- you're going to get a lot of
16 instructions about this; and I implore you to take your
17 time to go through them, because there also has to be the
18 specific intent to defraud. There also has to be material
19 misrepresentations. There also has to be a wire. And
20 those elements are all equally important.

21 When you heard Mr. Sandel talk to you about --
22 yesterday about baking a cake, all of those elements have
23 equal weight. And if they fail to prove any element to you
24 beyond a reasonable doubt, it requires you to find him not
25 guilty of those counts.

1 And so I ask you to make sure you take notes. Pay
2 attention. It's going to be important because a lot of
3 what I say now is not going to make any sense until you
4 hear the evidence; and then at the end, at the closing when
5 I come and talk to you about that, you'll see why I believe
6 the evidence is not going to prove to you beyond a
7 reasonable doubt that Mr. Ashley is guilty of what they
8 have charged him with.

9 MS. RATTAN: Your Honor, I'll have to object to
10 counsel expressing his personal opinion.

11 THE COURT: Sustained.

12 MR. WHALEN: So let's talk about what the
13 government has presented to you. And I think they're
14 looking at it from the standpoint of this scheme and this
15 murder and everything else, and I think what is important
16 is that timing is going to be important, because when they
17 talk to you about -- take example for the Google searches.

18 There is going to be evidence that shows that when
19 they showed September 3rd, that date, I think that date
20 will be important. Pay attention to September 3rd. What
21 information did he learn on September 3rd that led to the
22 searches? What information did he know -- learned that led
23 to some searches? Timing is important. Pay attention to
24 dates because those are going to be very significant for
25 you to look at because it explains a lot of different

1 things.

2 But also look at will -- you know, they talk about
3 this trust. I think it's going to be important to look at
4 the timing of the trust. The dates are there. But I think
5 what you're going to learn about the trust and about the
6 will is that the beneficiaries of the trust or the
7 beneficiaries of the will and the trust was his wife, his
8 son, and his nephew, okay?

9 Also in the trust there is another executor, his
10 nephew. And I think it's a reasonable inference and I ask
11 you that it's a reasonable inference that when you develop
12 trusts and you put people in there to watch after your
13 children or to be your executor, you let them know. And I
14 think that's important.

15 And I think it's also going to be important
16 because we believe the evidence will show that shortly at
17 the end of February, Mr. Ashley resigned his position as
18 executor or trustee of the trust.

19 So I think it's important just because he's the --
20 he was named the executor or the trustee, there was other
21 people part of that. So --

22 And also when you talk about there's phone calls
23 to Midland and they showed that screen about Midland, that
24 he called and said Mr. Seegan had died, it's recorded.
25 Everything Midland does is recorded. He knows that.

1 So think about what -- the evidence they have and
2 how everything is out in the open. It's recorded. There's
3 a Nest video. So just think about those items when you go
4 through this.

5 I think the other question, too, that you're going
6 to look at because elements matter -- when we look at this
7 robbery, okay, I think you really have to look at all the
8 elements because the Court gave you in the preliminary
9 instructions, one, they have to show that he possessed a
10 firearm, okay? That 9-millimeter they found in
11 Mr. Seegan's house, they have to show that Mr. Ashley
12 possessed that beyond a reasonable doubt.

13 And they want you to say -- infer that because he
14 had a firearm at his house they found at a search seven
15 months later, that means he had a firearm in that backpack
16 in February. Or that because he had ammunition of the same
17 caliber, that he had ammunition in that backpack.

18 We believe they're going to ask you to make
19 inference upon inference upon inference, and that's not
20 proof beyond a reasonable doubt. So that's the first
21 element.

22 The second element is this robbery issue, okay?
23 The judge gave you instructions about that and what the
24 elements are. And you talk about different elements of
25 robbery. They're equally important. There has to be a

1 taking by force, and it has to have an effect on interstate
2 commerce.

3 Why do we mention things like interstate commerce?
4 Because we're in federal court. If there's no interstate
5 commerce, then it's not a federal charge. They have to
6 prove that to you beyond a reasonable doubt. They have to
7 prove that element to you beyond a reasonable doubt.

8 They have to prove that it was taken by force.

9 And when they talk about murder -- you heard the
10 elements of murder the judge gave you. One of those
11 elements, it has to be in the territorial jurisdiction of
12 the United States.

13 You're going to get definitions of those. They're
14 extremely important for you to look at and consider because
15 just because they provide you evidence, it doesn't mean
16 it's proof beyond a reasonable doubt.

17 The other issue I think you're going to have to
18 consider in this case and why the firearm carrying, I
19 think, is going to be a real important issue is because you
20 heard Mr. Combs talk about, in *voir dire*, venue, how the
21 Eastern District is composed of different counties and the
22 Northern District of Texas is different counties.

23 Mr. Seegan's house in Carrollton, Texas, is in
24 Dallas County. That is in the Northern District of Texas,
25 not the Eastern District of Texas. We anticipate that

1 you'll get an instruction on venue. It's not an element
2 they have to prove to you beyond a reasonable doubt, but
3 it's something they have to prove to you by preponderance
4 of the evidence. So that matters. That's why that was --
5 I anticipate that's why that was brought up. And so that's
6 going to be an issue.

7 I think when you look at firearms -- we're going
8 to talk about that because it was mentioned that the
9 original purchaser lived 5 miles from his house. But I
10 think -- I think the ATF agent -- I think the evidence
11 would show that they only keep records of the original
12 purchaser. And I can only imagine how many firearms are
13 sold in Collin County in any particular year.

14 So they're asking you -- I think they're asking
15 you to infer and infer and infer, and we believe at the end
16 we'll be able to say that --

17 MS. RATTAN: Your Honor, I object this is
18 argumentative.

19 THE COURT: Sustained.

20 MR. WHALEN: I will tell you, too, that it's
21 important that I ask you this: Wait to the end.

22 You heard some jurors yesterday who were jurors
23 who said, yeah, I formed my opinion halfway through or
24 within the first day. And you've heard a lot of salacious
25 words or -- "vanity projects" and words like that. You

1 have to be objective.

2 And some of this evidence you're going to see is
3 not pleasant. The topic is not pleasant. None of this is
4 pleasant. But you took an oath to wait to the end. And as
5 I said, this is a very complicated legal case and factual
6 case; and I need you to just simply wait to the end because
7 I think -- I believe at the end the evidence will show to
8 you that the government can't bear the burden they've taken
9 on, to prove these elements to you beyond a reasonable
10 doubt, because the facts don't fit what they charged.

11 And it's going to require you to make a very
12 difficult decision, but it's going to require you to find
13 him not guilty. And that's what we ask you to do. Thank
14 you.

15 THE COURT: Thank you very much.

16 Does government want to call their first witness?

17 MS. RATTAN: Thank you, your Honor. The United
18 States calls Denny Willmon.

19 And may we, your Honor, have a moment to move
20 the --

21 THE COURT: Yes, you may.

22 MS. RATTAN: Thank you.

23 THE COURT: Can I have counsel approach?

24 And, ladies and gentlemen, when we have a bench
25 conference, you're welcome to stand and stretch, too, so --

1 (Sidebar conference, off the record.)

2 THE COURT: Go ahead, sir. You can approach.

3 Sir, if you'll raise your right hand to be sworn
4 in.

5 (The oath is administered to the witness.)

6 THE COURT: Okay. Go ahead and proceed.

7 MS. RATTAN: Thank you, your Honor.

8 DIRECT EXAMINATION OF DENNY MAURICE WILLMON

9 CALLED ON BEHALF OF THE GOVERNMENT

10 BY MS. RATTAN:

11 Q. Please state your name --

12 THE COURT: Is your mic on, Ms. Rattan?

13 MS. RATTAN: Thank you, your Honor.

14 BY MS. RATTAN:

15 Q. Please state your name.

16 A. Denny Maurice Willmon.

17 Q. Okay. And, Mr. Willmon, there is a microphone; and the
18 acoustics in here are very difficult. Yes.

19 Please state your name.

20 A. Denny Willmon.

21 Q. Will you please spell your name.

22 A. D-E-N-N-Y -- do you want the middle name?

23 Q. No, sir. That's all right.

24 A. Willmon is W-I-L-L-M-O-N.

25 Q. And, Mr. Willmon, let me ask you about your background.

1 Are you currently retired?

2 A. Yes.

3 Q. How long have you been retired?

4 A. I retired in 2008, December.

5 Q. Before you retired, can you tell us when you did?

6 A. I worked for Xerox Corporation. I was a technical
7 trainer, ran a training operation in Houston.

8 Q. A technical trainer and you ran a training operation in
9 Houston?

10 A. Correct.

11 Q. For what company did you work?

12 A. Xerox Corporation.

13 Q. How long did you work for Xerox Corporation before you
14 retired?

15 A. Forty-one years.

16 Q. And where did you grow up? Where are you from?

17 A. Originally from Arkansas; and right out of high school,
18 I moved to Houston.

19 Sorry about my voice. It's hoarse right now.

20 So I spent the rest of my life -- I got married --
21 down in Houston, and I've been there ever since.

22 Q. So you grew up in Arkansas, and you moved to Texas?

23 A. Correct.

24 Q. And you worked for Xerox Corporation for about 40
25 years, and you spent that time in Houston?

1 A. Yes.

2 Q. And you're married?

3 A. Yes.

4 Q. How long have you been married?

5 A. Fifty-three years.

6 Q. And you and your wife have children?

7 A. Yes, two daughters.

8 Q. Two daughters.

9 So let me ask you about someone by the name of
10 Keith Ashley. Did you meet at some point Keith Ashley?

11 A. Yes.

12 Q. Can you tell us how you met him?

13 A. I was referred to him -- when I retired, I was looking
14 for a money manager; and I was referred to him by one of my
15 fellow employees that had previously retired.

16 Q. So you got a reference. And did you meet with Keith
17 Ashley after he was referred to you?

18 A. Yes.

19 Q. Around when was this?

20 A. That was during the time that I was retiring, so it
21 would have been in probably December of 2008.

22 Q. So you're in Houston, but Keith Ashley was
23 headquartered in the Dallas area; is that right?

24 A. Right.

25 Q. So how did that work?

1 A. Well, it worked out okay. He would travel to Houston.
2 He had other clients, so he would travel to Houston and
3 meet with me ever so often and go over my investment
4 portfolio.

5 Q. And then as time passed, how would you describe your
6 relationship with Keith Ashley?

7 A. Well, I would say we became friendly in our business
8 relationship and -- and initially very successful in what
9 was taken care of.

10 Q. Things went well at first?

11 A. Yes.

12 Q. And you felt like he was friends, or friendly; is that
13 right?

14 A. Sure.

15 Q. Did you trust him?

16 A. I'm sorry?

17 Q. Did you trust him?

18 A. Yes.

19 Q. You were giving him your money; is that right?

20 A. Yes.

21 Q. At some point did you become concerned or suspicious?

22 A. Well, yes.

23 Q. Was there an investment that you made with him that you
24 became concerned about?

25 A. Yes.

1 Q. Can you describe for the jury what happened?

2 A. Well, I got some money from the sale of a home and I
3 had some money that I needed to invest and Keith
4 recommended that I put it in a UIT and it was -- the
5 company was SmartTrust that I understood it was among.

6 Q. So you got some money from the sale of a house. Was
7 that your mother's house in Arkansas?

8 A. That's correct.

9 Q. So you had some money from the sale of your mother's
10 house in Arkansas, and you wanted to invest that money?

11 A. Correct.

12 Q. So you asked Keith Ashley what you should do, and he
13 talked to you about a SmartTrust UIT?

14 A. Yes. And eventually I got information in a portfolio.
15 That was a problem, however.

16 Q. What do you mean by "that was a problem"?

17 A. Well, I had asked for that kind of document where I
18 would understand the money and how it was -- how it was
19 financed; and it took a while to get a document, quite some
20 time. So that was -- that was a bit bothersome.

21 Q. So you wanted to see it, you wanted to know --

22 A. Right.

23 Q. -- and it took a while?

24 A. That's correct.

25 MR. WHALEN: Your Honor, if we may approach

1 briefly?

2 THE COURT: Yes.

3 (Sidebar conference, off the record.)

4 THE COURT: Okay. So the Rule has been invoked,
5 which just means that witnesses who are not excused cannot
6 be in the courtroom. So if there is any witness in the
7 courtroom, I'm going to ask you to leave at this time.

8 Otherwise, Ms. Rattan, go ahead and continue.

9 BY MS. RATTAN:

10 Q. So there was a SmartTrust UIT that Keith Ashley told
11 you about. And what happened?

12 A. Well, initially it appeared to be that I was making
13 nice interest payments monthly; and that seemed to be
14 meeting the criteria that was explained to me. So, you
15 know, it looked like a good, positive investment.

16 Q. So at first things looked pretty good. But did
17 something happen eventually?

18 A. Well, at one point just the communication about it,
19 like I was not getting a quick response. He was always
20 busy or had some kind of reason where I never really got
21 the details of the -- but eventually he sent me a document
22 that looked like a portfolio but -- so I accept -- you
23 know, I thought that's what it really was.

24 Q. And at that point had you already given him your money?

25 A. Yes, and I -- and more than just the money from the

1 property that was sold. So I gave him quite a lot more
2 than that.

3 Q. About how much money in total would you estimate that
4 you gave Keith Ashley to invest for you?

5 A. It was somewhere around \$190,000.

6 Q. A hundred and -- pardon me?

7 A. A hundred -- Well, initially it said 151,000; and it
8 got up to over that because I was able to make -- add
9 installments to the plan. So those were --

10 Q. So, in total, how much would you estimate that you gave
11 Keith Ashley to invest on your behalf?

12 A. Around \$190,000.

13 Q. \$190,000.

14 A. Right.

15 Q. And how much money would you say that you lost, that
16 you never got back from that?

17 A. Well, he returned around 20,000 in those installments
18 monthly. So you could do the math there how much is left.

19 Q. So he gave 20 back, so you lost about \$170,000; is that
20 right?

21 A. That's correct.

22 Q. Now, when you would give Keith Ashley money for this
23 SmartTrust UIT that he told you about, would you give him
24 checks; or how would you pay him?

25 A. They were checks.

1 Q. Let me ask you to look on the stand in front of you. I
2 know it's kind of a tight space there. But there is a
3 notebook, and I've opened it to a page. It's Government's
4 Exhibit Number 45A. I ask you -- and 45A --

5 MS. RATTAN: May I approach the witness, your
6 Honor?

7 THE COURT: Yes.

8 A. I see it here.

9 BY MS. RATTAN:

10 Q. Oh, okay. Let me direct your attention to 45A, page 1.
11 And then I'm also going to ask you to look at 46.

12 A. Okay.

13 MS. RATTAN: May I return, your Honor?

14 THE COURT: Yes.

15 BY MS. RATTAN:

16 Q. So, Mr. Willmon, 45A, page 1, is that an example of a
17 check that you wrote to Keith Ashley to invest for you with
18 the SmartTrust UIT investment?

19 A. Yes.

20 MS. RATTAN: Your Honor, may we publish -- or
21 offer, I guess, Government's Exhibit 45A?

22 MR. WHALEN: No objection, your Honor.

23 THE COURT: Okay. 45A will be admitted, and you
24 may publish.

25 *

1 BY MS. RATTAN:

2 Q. Now, Mr. Willmon, of course you have the check in front
3 of you; but if you look to your right, there is also a
4 screen.

5 A. Yes.

6 Q. This is Government's Exhibit 45A, and is this a
7 check -- and you wrote him a number of checks, but is this
8 an example of a check that you wrote to Keith Ashley?

9 A. Yes.

10 Q. Now, the check says "Mr. or Mrs. Denny Willmon."

11 That's you and your wife, is that right, here at the top?

12 A. Oh, yes. Yes.

13 Q. And then the date that you wrote it is right here,
14 March 12th of 2019?

15 A. Correct.

16 Q. Now, you thought you were investing in a SmartTrust UIT
17 with Keith Ashley; but the check says "Pay to the order of
18 KBKK." Who told you to put "KBKK" there?

19 A. Keith Ashley.

20 Q. And then the amount of money that's invested, \$20,000,
21 how did you come up with that amount?

22 A. It was -- I don't remember specifically, but it was
23 collected money that I had accumulated I was trying to
24 invest.

25 Q. Okay. And, again, you said that in total it was about

1 \$190,000; and this is just one sample check?

2 A. Yes.

3 Q. And then, of course, you signed it.

4 A. Right.

5 Q. And then this has an account listed over here. What
6 were you referencing there?

7 A. I think that had to do with the bank, the Prosperity
8 Bank.

9 Q. And where would you have received that information?

10 A. From -- from -- hmm. I'm sorry. I'm not exactly, you
11 know, positive what that account references. I assume it
12 had to do with the Prosperity Bank --

13 Q. Okay.

14 A. -- for my checking account.

15 Q. Okay. And you wrote it out to KBKK for \$20,000; is
16 that right?

17 A. That's correct.

18 Q. Now, at some point you said -- you've testified that
19 you became concerned and that you weren't getting the
20 payments you thought you were going to get?

21 A. Yes. There was a few instances where the payment was
22 missed and I had to go back and find out and we talked
23 about it and then there was a double payment made to make
24 up for it. That happened a couple of times.

25 Q. And you would try to reach him and tell him?

1 A. Yes. But I began to have trouble, you know, getting in
2 touch and follow-up; and by this time, visiting and coming
3 to go over my portfolios seemed to be a problem.

4 Q. He stopped coming to Houston?

5 A. Yes.

6 Q. So did you send him an email and ask him what was going
7 on?

8 A. I did email him regarding this kind of communication,
9 yes.

10 Q. And then let me ask you. On the stand there in front
11 of you I showed you Government's Exhibit 46. Is that a
12 sample of an email that you sent him asking what was going
13 on?

14 A. 46?

15 Q. Yes, sir.

16 A. Goes from 45A to 45B --

17 MS. RATTAN: May I approach, your Honor?

18 THE COURT: Yes.

19 MS. RATTAN: Thank you.

20 A. Oh, I just didn't turn enough pages.

21 BY MS. RATTAN:

22 Q. Is it there?

23 A. Yes. I finally turned the --

24 Q. Oh, okay.

25 A. -- saw this tab out here.

1 Q. Oh, okay. Sorry.

2 Do you recognize that as an email that you sent to
3 him?

4 A. Yes.

5 MS. RATTAN: Your Honor, we'll offer Government's
6 Exhibit 46.

7 MR. WHALEN: No objection, your Honor.

8 THE COURT: 46 will be admitted.

9 MS. RATTAN: And may we publish it?

10 THE COURT: Yes, you may.

11 BY MS. RATTAN:

12 Q. Now, just like any email, you have to read it from the
13 bottom up because the bottom is the person sending the
14 email.

15 MS. RATTAN: And if we can start right here and
16 highlight that.

17 BY MS. RATTAN:

18 Q. So this is sent on April 26th of 2020, so you've
19 invested quite a bit of money at this point; is that fair
20 to say?

21 A. Yes.

22 Q. And you're emailing because it says, "Thanks. Take
23 care, Denny" down here at the bottom. And Denny, that's
24 you.

25 A. Yes.

1 Q. And you say, "Hi Keith, Just wanted to update you on
2 our KBKK bank deposits."

3 What are you talking about there when you say the
4 "KBKK bank deposits"?

5 A. Well, that deposit location is how he was receiving the
6 money to be invested. That was my understanding.

7 Q. You were sending the money to KBKK.

8 A. Yes.

9 Q. You made your money out to KBKK.

10 A. Right.

11 Q. So you're telling him there's a problem at KBKK?

12 A. Yeah. I mean, I didn't -- I didn't know exactly
13 what -- at that point I was wondering how this was all
14 working, I guess.

15 Q. Okay. So you tell him (as read), "Here is the deposit
16 dates that indicate that one month is still missing." And
17 then you give him the rundown. October 18th of 2019, it's
18 the "last old deposit amount." And then you say, 770, the
19 "new deposit amount."

20 Anyway, you run it down to January of 2020 and you
21 tell him that there is no deposit there; is that right?

22 A. Correct.

23 Q. So what are you trying to tell him? What's happening
24 here?

25 A. Well, I assumed at that point there was just some

1 mistake or problem that he had or the company had. I
2 guessed it was about the company where I thought this money
3 was deposited. It's smart finance -- SmartTrust company,
4 that they weren't -- they were making mistakes or something
5 in getting it deposited.

6 Q. That's what you thought was happening?

7 That's what you thought was happening?

8 A. Yes. I thought there was just mistakes.

9 Q. So then the January 2020 no deposit and then
10 February 24th of 2020, it looks like a makeup amount; is
11 that right?

12 A. Yes.

13 Q. For both January and February.

14 And then we come down to March and what happens?

15 A. Well, the same thing happened basically again.

16 Q. No money coming in?

17 A. Yeah.

18 Q. So you're notifying him that something seems to be
19 wrong; is that right?

20 A. Yes.

21 MS. RATTAN: And then if we can back out and look
22 at the response to this email, at the top of the page.

23 BY MS. RATTAN:

24 Q. So here we've captured the top of your email to him.
25 It's on April 26th of 2020.

1 But then above that is his response to you. He's
2 emailing you from keith@northtexasmoney.com. He responds
3 the same day, and it's about the KBKK update. And what
4 does he tell you?

5 A. Well, he's going to call me on Monday or -- that's what
6 it's -- and that response, I remember getting that.

7 Q. And pardon me?

8 A. I remember getting that response, yeah.

9 Q. This "I'll call you Monday" response?

10 A. Yeah.

11 Q. So eventually what happened?

12 A. Well, in these -- both cases he made the adjustment, I
13 think, in the payment; and so I assumed that it was getting
14 taken care of, that he was contacting this company that was
15 managing the portfolio and getting it fixed.

16 Q. Did you ultimately find out that there was no
17 SmartTrust UIT investment on your behalf?

18 A. Yeah, eventually it became obvious to me that the
19 document was created.

20 Q. When you say "the document was created," what do you
21 mean by that?

22 A. Well, the portfolio document that was sent, after
23 looking at it closely, it seemed that it was not really
24 from the company that I assumed it was.

25 Q. It was just a document that he provided you to get your

1 money to get you to invest?

2 A. Yes.

3 Q. Okay. And, in fact, you trusted him and you did that;
4 is that right?

5 A. Yes.

6 Q. So, in total, you're saying that you lost about
7 \$170,000; is that right?

8 A. Yes.

9 MS. RATTAN: Now may I approach the witness, your
10 Honor?

11 THE COURT: Yes.

12 MS. RATTAN: If we can re-publish Government's
13 Exhibit 45A.

14 BY MS. RATTAN:

15 Q. And, Mr. Willmon, this is the check that we went
16 through just a minute ago with you; and I'm just going to
17 ask you to look at that and tell me whether this blowup of
18 a check, which is marked Government's Exhibit 45A, is the
19 same check that we analyzed.

20 A. Yes.

21 Q. Okay. And, again, the defendant told you to write it
22 out to KBKK, that was your \$20,000, and that's your
23 signature; is that right?

24 A. Yes.

25 Q. Okay. Now, Mr. Willmon, Keith Ashley was your

1 financial advisor; and you worked with him for a number of
2 years. Do you see him in the courtroom today?

3 A. Yes, I see him.

4 Q. Can you point to him and identify something that he's
5 wearing?

6 A. He's over here (indicating) and he's in a suit.

7 Q. Okay. Now, if this is Person Number 1, this is 2, this
8 is 3, and this is 4, what number would he be?

9 A. 4.

10 MS. RATTAN: Your Honor, may the record reflect
11 that the witness has identified the defendant, Keith Todd
12 Ashley?

13 THE COURT: The record will so reflect.

14 MS. RATTAN: And I'll pass the witness.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION OF DENNY MAURICE WILLMON

17 BY MR. WHALEN:

18 Q. Mr. Willmon, good morning.

19 A. Good morning.

20 Q. My name is James Whalen. I represent Mr. Ashley. I
21 just have some questions for you. And if I ask something
22 you don't understand, just tell me, okay?

23 A. All right.

24 Q. Okay. This SmartTrust investment you talked about, was
25 there any paperwork or any contract that you signed as

1 related to that?

2 A. I'm thinking about it. I don't remember that there was
3 anything signed.

4 Q. Okay. And so this is all based on a conversation that
5 you had with Mr. Ashley; is that correct?

6 A. Most everything about it was verbal, yeah.

7 Q. Okay. And just so we're clear for the record, every
8 time you gave Mr. Ashley money, it was through a check,
9 correct?

10 A. Yes.

11 Q. Okay. And the email that you sent in April that we saw
12 on the screen, 26th of 2020, did anything particular cause
13 you to send that email?

14 A. Well, I mean, I guess the answer to that would be I
15 hadn't received a payment so I wanted to know why.

16 Q. Okay. Had you been contacted yet by either a private
17 investigator or law enforcement, in April of 2020?

18 A. I -- a detective did call me.

19 Q. Okay. Do you know when that was?

20 A. That -- I might have it noted somewhere, but I couldn't
21 remember -- I don't remember exactly.

22 Q. Okay. So just so we're clear, the check that we saw
23 today and the email, is that the sum and substance of the
24 paperwork that you have as it relates to the money you sent
25 to Keith Ashley?

1 A. Repeat that one more time.

2 Q. Sure.

3 As far as this email that you sent him about the
4 payments, is that the only email you sent him laying out
5 what payments were missed or behind?

6 A. I don't -- yes.

7 Q. Okay.

8 A. I can't remember another one like that.

9 Q. All right. And the checks for -- we saw a check for
10 \$20,000. Do you have the checks for the -- what you say
11 the \$190,000?

12 A. I have the -- I have the checks and copies of them
13 for -- that support the \$190,000.

14 Q. Okay. And just again, as far as this investment in
15 KBKK, it was all a verbal exchange, correct, with
16 Mr. Ashley?

17 A. Yes, the --

18 Q. Okay.

19 A. -- the information to deposit the money against the UIT
20 investment was verbal.

21 Q. Okay. Thank you.

22 MR. WHALEN: I'll pass the witness.

23 THE COURT: Anything additional?

24 MS. RATTAN: Just real briefly.

25 *

1 REDIRECT EXAMINATION OF DENNY MAURICE WILLMON

2 BY MS. RATTAN:

3 Q. Mr. Willmon, you emailed with him about the investment.

4 In fact, we saw the email; is that right?

5 A. Yes.

6 Q. Did you talk to him on the phone about the investment?

7 A. I know I tried to. That was at times difficult to get
8 in touch with him, but I did in one of those cases. And
9 that happened twice, okay, that I remember. So I did talk
10 to him at least one time regarding that.

11 Q. On the phone?

12 A. Yes.

13 MS. RATTAN: I'll pass the witness.

14 THE COURT: Anything else?

15 MR. WHALEN: No, your Honor.

16 THE COURT: Can this witness be fully excused?

17 MS. RATTAN: Yes, please.

18 MR. WHALEN: Yes.

19 THE COURT: Sir, you are free to leave. Thank
20 you.

21 So I think we'll go ahead and take our morning
22 break. Ladies and gentlemen, I will tell you that I
23 believe the water situation has improved so -- I think we
24 have 50 percent pressure, so I think that all of the
25 facilities in the courthouse are now operational.

1 So we'll go ahead and take 15 minutes. One thing
2 I will tell you every time we break is please don't discuss
3 the case among yourself or anyone else. Don't do any
4 outside research. We'll take 15 minutes and come back and
5 continue.

6 If you go upstairs and there is a problem with the
7 bathroom -- my understanding is I have a report that they
8 are working -- then we'll figure out Plan B. But for now,
9 let's take 15 minutes and come back and continue. Thank
10 you.

11 (The jury exits the courtroom, 10:15 a.m.)

12 THE COURT: Anything further from the government?

13 MS. RATTAN: No, your Honor.

14 THE COURT: Defense?

15 MR. WHALEN: Your Honor, I do -- I mean, nobody's
16 maybe ever raised this; but I am concerned. On the third
17 floor I believe the women's -- I don't know what bathroom
18 they use in the jury room, but on the third floor there is
19 a poster of the 15 most wanted people by the U.S. Marshals
20 hanging on the wall. And I don't know to what extent the
21 jurors walk back there, but it is concerning to me that
22 they would be able to be exposed to that during the trial.
23 And so I bring it to the Court's attention that if there is
24 a way to remedy that, that is my request.

25 THE COURT: Let me check and see. I don't

1 think -- I think they use the bathroom in the jury room,
2 but let me just ask if our court security officer can
3 answer that question.

4 THE COURT SECURITY OFFICER: They do use the
5 hallway.

6 THE COURT: Okay. So they do use that as an
7 overflow, so I will check with the marshals to see if they
8 can remove that poster during the pendency of the trial.
9 No one's ever raised that issue before so --

10 MR. WHALEN: All right.

11 THE MARSHAL: And we've never had that issue. In
12 all of the trials we've been in, we've never had that
13 issue.

14 THE COURT: I understand.

15 MR. WHALEN: I'm just a little more conscientious
16 than everybody else, Judge.

17 THE COURT: Well, I don't know if it makes a
18 difference; but we'll go ahead and see about taking care of
19 that.

20 MR. WHALEN: Okay. Thank you.

21 THE COURT: Okay. See you back in 15 minutes.

22 (Recess, 10:17 a.m. to 10:34 a.m.)

23 (Open court, defendant present, jury present.)

24 THE COURT: Please be seated.

25 Okay. Your next witness?

1 MS. RATTAN: Your Honor, the United States calls
2 Jeanny Gallot.

3 THE COURT: Ma'am, if you'll raise your right hand
4 and be sworn in.

5 (The oath is administered to the witness.)

6 THE COURT: Go ahead and proceed.

7 MS. RATTAN: Thank you, your Honor.

8 DIRECT EXAMINATION OF JEANNY GALLOT

9 CALLED ON BEHALF OF THE GOVERNMENT

10 BY MS. RATTAN:

11 Q. Please state your name.

12 A. My name is Jeanny Gallot.

13 Q. And, Ms. Gallot, it's hard to hear in here and it may
14 feel like you're speaking right on it; but as closely as
15 you can, speak into the microphone.

16 Will you spell your name, please.

17 A. J-E-A-N-N-Y. Last name, G-A-L-L-O-T.

18 Q. And that's perfect. We can hear you, I think, well.

19 Ms. Gallot, will you tell the jury where you work?

20 A. I work at BB&T, now Truist, as an operations leader.

21 Q. Can you explain to the jury, what is BB&T?

22 A. BB&T is a bank.

23 Q. So Branch Banking and Trust, BB&T. And you say now
24 BB&T, Branch Banking and Trust, is called Truist?

25 A. Correct. We just merged with SunTrust, and we are now

1 Truist.

2 Q. Now, before BB&T, Branch Banking and Trust, was Truist
3 was it another bank before that?

4 A. In Texas it was Colonial Bank or Citibank.

5 Q. Citibank.

6 So whether it's Citibank or Branch Banking and
7 Trust -- we're calling BB&T -- or Truist, how long have you
8 worked there?

9 A. Seventeen years.

10 Q. So through each change, you've been there with the
11 bank?

12 A. Correct.

13 Q. And then you said what you do there. Can you describe
14 what your position is?

15 A. We take care of operations, whether it be fraud,
16 facilities, anything operational in the branches.

17 Q. And the bank -- and when I say the bank, whether it's
18 Citibank or BB&T or Truist -- is the bank that you work for
19 and have worked for 17 years -- is it FDIC-insured?

20 A. Yes, it is.

21 Q. Federal Deposit Insurance Corporation-insured bank?

22 A. Yes, it is.

23 Q. Now, let me ask you, did we ask you to focus on a
24 specific account when we were reviewing the records?

25 Did we ask you to look at the KBKK account?

1 A. Yes, you did.

2 Q. And let me ask you to look on the stand in front of
3 you. There is a book, and I've opened it to Government's
4 Exhibit 8B. I'll ask you if you see that.

5 A. Yes, I do.

6 Q. Okay.

7 MS. RATTAN: May I approach the witness, your
8 Honor?

9 THE COURT: Yes, you may.

10 BY MS. RATTAN:

11 Q. We have a chart here and this chart is labeled as
12 Government's Exhibit 45A and it's a check; is that right?

13 A. That is correct.

14 Q. Now, the check says "Pay to the order of KBKK"; is that
15 right?

16 A. Yes.

17 Q. So let's see who KBKK is -- because the KBKK account is
18 at your bank; is that right?

19 A. Yes, it is.

20 MS. RATTAN: Your Honor, we'll offer Government's
21 Exhibit 8B.

22 MR. WHALEN: No objection, your Honor.

23 THE COURT: 8B will be admitted.

24 MS. RATTAN: May we publish it?

25 THE COURT: Yes, you may.

1 BY MS. RATTAN:

2 Q. So, Ms. Gallot, is this the signature card with the
3 Citibank, which was the name of the bank before it became
4 Branch Banking and Trust?

5 A. Yes, it is.

6 Q. And is it the Citi card associated with this business
7 name, KBKK, LLC?

8 A. Yes, it is.

9 Q. And does it tell us who KBKK is?

10 A. It does.

11 Q. And who is that?

12 A. Keith Ashley.

13 Q. So the first and last name of the person who holds the
14 account KBKK is Keith Ashley; is that right?

15 A. Correct.

16 Q. Let me direct your attention to page 2 of Government's
17 Exhibit 8B.

18 MS. RATTAN: We can publish that.

19 BY MS. RATTAN:

20 Q. Of course, this is also a document of your bank. And
21 does it also tell us who KBKK is, who is it behind that
22 account?

23 A. Yes, Keith Ashley.

24 Q. Okay. And it says "Keith Ashley." It's also got
25 "Brandi Ashley"; is that right?

1 A. Correct.

2 Q. And it shows an address of 1211 Boerne Court in Lucas,
3 Texas; is that right?

4 A. Correct.

5 Q. And then it says the name -- or the signer and then
6 they've got a tax ID number there and again we've got
7 "Keith Ashley"; is that right?

8 A. Correct.

9 Q. So the account there at BB&T for KBKK -- the account
10 holder, in fact, is Keith Ashley; is that right?

11 A. Correct.

12 Q. Now let me ask you about wires that go through your
13 bank, out of your bank, into your bank.

14 Do all wires that come in and out of your bank
15 cross through another state?

16 A. Our wire room is in North Carolina.

17 Q. So the wire room for your bank is in -- what part of
18 North Carolina?

19 A. Lumberton.

20 Q. So Lumberton, North Carolina.

21 So every wire that passes through your bank or is
22 involved with your bank is going to pass through Lumberton,
23 North Carolina?

24 A. Correct.

25 Q. Okay.

1 MS. RATTAN: May I approach the witness, your
2 Honor?

3 THE COURT: Yes.

4 BY MS. RATTAN:

5 Q. Now, did you review some wires before you came to court
6 today?

7 A. Yes, I did.

8 Q. And did you assure yourself that those were wires from
9 your bank and that they, in fact, would have passed
10 interstate?

11 A. Yes.

12 Q. Okay. Let me show you what's been marked -- and it's
13 in your book as well -- as Government's Exhibit 49 and 55.

14 MS. RATTAN: We'll offer those, your Honor, 49 and
15 55.

16 THE COURT: Any objection?

17 MR. SANDEL: No objection, your Honor.

18 THE COURT: Okay. 49 and 55 will be admitted.

19 MS. RATTAN: And if I can use the stand to display
20 this chart, which is Government's Exhibit --

21 THE COURT: Yes.

22 MS. RATTAN: Thank you.

23 THE COURT: Yes, go ahead.

24 BY MS. RATTAN:

25 Q. Ms. Gallot, I want to make it so that you can see this

1 but also so the jury can see it. So, let's see, it's
2 Government's Exhibit 49. Can you see it?

3 A. Yeah, I'm getting it.

4 Q. Okay. I know the pages are kind of hard to turn in the
5 book.

6 A. I can see it here.

7 Q. Okay. So, again, we're referencing Government's
8 Exhibit 49; and I'm asking you about BB&T. That's the name
9 of your bank, Branch Banking and Trust?

10 A. Correct.

11 Q. Okay. And these are wire transfer operations; is that
12 right?

13 A. Correct.

14 Q. Now, this wire transfer is related to the account that
15 we just looked at, which was KBKK, Keith Ashley.

16 A. Correct.

17 Q. So we've got KBKK, LLC, listed there and it's located,
18 it says, in Allen, Texas; is that right?

19 A. That is correct.

20 Q. Now walk us through what is going on here with this
21 wire.

22 A. This appears that they received a credit, meaning the
23 money came into his account.

24 Q. So this money is going into the KBKK account?

25 A. Correct.

1 Q. And how much is going into the account?

2 A. 75,000.

3 Q. \$75,000.

4 And who is sending the money into the account?

5 A. Robert V. Greenling (*sic*).

6 Q. Is it Robert L. Greening?

7 A. Sorry. I read it wrong. Greening, yes.

8 Q. Okay. So it says "Investment," from Robert L., Lee,

9 Greening; is that right?

10 A. Correct.

11 Q. So this is the investor, Robert L. Greening; and then
12 it's going to the KBKK account. And we know that's the
13 Keith Ashley account; is that right?

14 A. Correct.

15 Q. And it's \$75,000; and the date of the transfer is
16 February 6th of 2020?

17 A. Correct.

18 Q. Now, this transfer, this wire transfer that's
19 Government's Exhibit Number 49, would this have been an
20 interstate wire transfer?

21 MR. WHALEN: Objection -- oh, that's you.

22 THE COURT: Overruled but --

23 A. It would have come through North Carolina, yes.

24 BY MS. RATTAN:

25 Q. Okay. So it would have gone through North Carolina and

1 been an interstate wire; is that correct?

2 A. Yes.

3 Q. Let me direct your attention now to Government's
4 Exhibit 55?

5 MS. RATTAN: And we'll offer this as well, your
6 Honor.

7 THE COURT: 55 has already been admitted.

8 MS. RATTAN: Oh, thank you.

9 THE COURT: You've already offered it, and it's
10 been admitted.

11 MS. RATTAN: May I publish it?

12 THE COURT: Yes.

13 BY MS. RATTAN:

14 Q. Now the same questions with this, Ms. Gallot. Can you
15 explain -- this is Government's Exhibit 55 -- what this is?

16 A. This is also a credit; and it came from a bank for
17 150,000.

18 Q. Okay. So the amount is right here; and it's 150,000.

19 And when you say a "credit," does that mean that
20 it's money going into BB&T's account?

21 A. Yes, it does.

22 Q. Okay. Whose account at BB&T is it going to?

23 A. Mr. Ashley.

24 Q. Because we've got the "KBKK, LLC," right here --

25 A. Correct.

1 Q. -- in Lucas, Texas; is that right?

2 A. Correct.

3 Q. So that's the Keith Ashley.

4 And the amount that's going in there is \$150,000;
5 is that right?

6 A. That is correct.

7 Q. And do we have the originator or who's sending the
8 \$150,000?

9 A. James Seegan.

10 Q. So James Seegan is the originator and he's sending
11 \$150,000 to KBKK; is that right?

12 A. Correct.

13 Q. Now, what is the date of this transfer?

14 A. You'll need to make it bigger.

15 Q. Okay.

16 MS. RATTAN: Can we blow up the middle portion of
17 it, please, where it says "Input Cycle date."

18 A. 5-5-16.

19 BY MS. RATTAN:

20 Q. So the date is right here and that's when it took
21 place; is that right?

22 A. Correct.

23 Q. So this transfer from James Seegan of \$150,000 to KBKK,
24 which is Keith Ashley, would this have been an interstate
25 wire transfer?

1 A. (Moving head up and down.)

2 It would have gone through North Carolina.

3 MS. RATTAN: May I return to the podium, your
4 Honor?

5 THE COURT: Yes.

6 MS. RATTAN: Okay, thanks.

7 BY MS. RATTAN:

8 Q. Now, although we've looked at the large blowups of the
9 wire transfers, the two that we just focused on, there were
10 other wire transfers that involved your bank that you
11 reviewed; is that correct?

12 A. Correct.

13 Q. Okay. So let me direct your attention on the stand in
14 front of you to the notebook, Government's Exhibit 52B, C,
15 and D.

16 A. I'm not seeing it.

17 Q. Do you see it?

18 MS. RATTAN: May I approach, your Honor?

19 THE COURT: Yes.

20 BY MS. RATTAN:

21 Q. That book ends with 50, so that's why you don't see it.
22 I'm sorry.

23 MS. RATTAN: May I return?

24 THE COURT: Yes.

25 *

1 BY MS. RATTAN:

2 Q. And have you previously reviewed Government's
3 Exhibits 52B, C, and D?

4 A. Yes, I have.

5 Q. And then let me ask you to also look at Government's
6 Exhibit 55 in the book, which I think we just reviewed that
7 on the chart.

8 A. Okay.

9 Q. And you recognize all of those?

10 A. Yes.

11 MS. RATTAN: Your Honor, we'll offer Government's
12 Exhibits 52B, C, and D.

13 MR. SANDEL: No objection, your Honor.

14 THE COURT: Okay. 52B, C, and D will be admitted.

15 MS. RATTAN: And may we publish Government's
16 Exhibit 52?

17 THE COURT: 52B or --

18 MS. RATTAN: 52B. Sorry. Thank you.

19 THE COURT: Yes.

20 BY MS. RATTAN:

21 Q. Okay. Ms. Gallot, can you explain to the jury what
22 this is?

23 A. This is a wire outgoing, meaning it was taken from the
24 account to another account.

25 Q. And it's going from what account?

1 A. KBKK.

2 Q. And that, we know, is the Keith Ashley account.

3 And the amount of the wire is how much?

4 A. 16,496.15.

5 Q. And what date is the wire sent?

6 A. 2-7-2020.

7 Q. And it's being sent from where?

8 A. From BB&T.

9 Q. And the originator is there, KBKK; is that right?

10 A. KBKK, LLC, yes, uh-huh.

11 Q. And then you've also got the beneficiary name down
12 here. Who is that?

13 A. It says it's NTMM-Keith Ashley.

14 Q. And as you've said, of course, this wire would have had
15 to have transferred through North Carolina; is that right?

16 A. Correct.

17 Q. Now let me direct your attention Government's
18 Exhibit 52C.

19 What is this?

20 A. This is also an outgoing wire. Money was sent to
21 another institution.

22 Q. And how much is it?

23 A. 12,000.

24 Q. And it was sent -- who was the originator?

25 A. KBKK, LLC.

1 Q. And then it's sent to another Keith Ashley account; is
2 that right?

3 A. Correct.

4 Q. So it's KBKK, Keith Ashley, sending money to Keith
5 Ashley?

6 A. Correct.

7 Q. By wire?

8 A. Yes.

9 Q. And, of course, same question. Would this have
10 transferred through North Carolina?

11 A. Correct.

12 Q. And then let me direct your attention to Government's
13 Exhibit 52D.

14 What is this?

15 A. Another outgoing wire.

16 Q. And what's the amount here?

17 A. 13,500.

18 Q. And it's from who and --

19 A. KBKK.

20 Q. Okay. It's from Keith Ashley, KBKK.

21 And it's going where?

22 A. Keith Ashley.

23 Q. So just transferring it to another account, and it's by
24 wire?

25 A. Correct.

1 Q. And this wire would have gone through North Carolina?

2 A. Correct.

3 Q. Well, let me ask you about the effect that fraud and
4 financial transfers have on the banking industry and on
5 your bank specifically.

6 MR. SANDEL: Objection, your Honor. That calls
7 for opinion testimony.

8 THE COURT: Overruled.

9 BY MS. RATTAN:

10 Q. If a transaction with the bank -- specifically with
11 your bank, BB&T -- is conducted fraudulently, can the bank,
12 BB&T, be held responsible or liable?

13 MR. SANDEL: Objection, calls for speculation,
14 your Honor.

15 THE COURT: Overruled.

16 If you can answer.

17 A. For any outgoing wires, we could be held responsible,
18 yes.

19 BY MS. RATTAN:

20 Q. And could the bank be sued potentially by Ponzi scheme
21 victims?

22 MR. SANDEL: Objection, speculation, your Honor.

23 THE COURT: Overruled.

24 If you can answer.

25 A. I don't know.

1 BY MS. RATTAN:

2 Q. Does BB&T invest time and money in preventing crime and
3 fraudulent wires and money laundering?

4 A. Yes, we do.

5 Q. Okay. Does that affect BB&T as an institution?

6 MR. SANDEL: Objection, calls for speculation,
7 your Honor.

8 THE COURT: Overruled.

9 If you know.

10 A. I would assume.

11 BY MS. RATTAN:

12 Q. Does it cost you-all money and manpower to do those
13 things?

14 A. Yes.

15 Q. So what sort of things does BB&T do to detect and
16 prevent fraud in the abuse of your accounts?

17 A. We have --

18 MR. SANDEL: Objection, relevance, your Honor.

19 THE COURT: Overruled.

20 A. We have multiple departments that handle it. We have a
21 fraud department. We have a wire department. We have our
22 branches. And they're all trained to review and know our
23 clients prior to sending wires.

24 BY MS. RATTAN:

25 Q. Okay. So the fraud department is focusing on whether

1 any of your accounts are being used for crime; and it's
2 also looking at whether any money involved in crime is
3 being transferred, laundered?

4 A. Correct.

5 Q. And it's important for the bank to know its customers;
6 is that right?

7 A. Correct.

8 Q. In fact, that's what you're charged with doing and you
9 have divisions that do that; is that correct?

10 A. Correct.

11 Q. Could the reputation of the institution also be
12 affected by these fraudulent accounts?

13 MR. SANDEL: Objection, your Honor. Calls for a
14 legal conclusion and speculation.

15 THE COURT: Overruled.

16 A. Yes, it could be.

17 BY MS. RATTAN:

18 Q. Okay. When you say that, explain to us what you mean.
19 How could fraud in BB&T's accounts affect the reputation of
20 the institution?

21 A. If we're involved in fraud -- well, if somebody commits
22 fraud, whether it be fraudulent accounts or money
23 laundering through wires, our reputation could be tarnished
24 if the person is actually convicted of it.

25 Q. And, of course, the reputation of a bank affects

1 business and who wants to come there and bring their money
2 there; is that right?

3 A. Correct.

4 Q. So if BB&T does detect fraud as you continue to
5 evaluate accounts, what is done if an account is believed
6 to be involved in fraud?

7 A. We block the account, we review the account, and we
8 submit -- I'm sure when security gets involved, they submit
9 the proper paperwork.

10 Q. So if a transaction is conducted fraudulently in BB&T's
11 account, will that affect BB&T?

12 A. It will.

13 MS. RATTAN: I'll pass the witness.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION OF JEANNY GALLOT

16 BY MR. SANDEL:

17 Q. Ms. Gallot, good afternoon. How are you?

18 A. I'm fine, thank you. How about you?

19 Q. I'm good. Did I pronounce your last name correct?

20 A. Yes, you did.

21 Q. Okay. Just a few questions.

22 MR. SANDEL: First, if we could, can we put
23 Government's Exhibit 8B on the screen.

24 BY MR. SANDEL:

25 Q. Okay. Ms. Gallot, you testified on direct that this

1 was a signature card for a KBKK account, correct?

2 A. Correct.

3 Q. Now, when we look at this number here, what is that
4 number?

5 A. That's the account number.

6 Q. Okay. And what are the last four digits of that
7 account number?

8 A. It's 1166.

9 Q. Okay.

10 MR. SANDEL: If we can now, please, look at
11 Government's Exhibit 55.

12 Thank you.

13 BY MR. SANDEL:

14 Q. And when you testified about this exhibit -- remind me
15 what this exhibit was.

16 A. That was a credit, an incoming wire.

17 Q. An incoming wire.

18 And so can you tell, by looking at Exhibit 55,
19 what account that was being credited to?

20 A. Can you blow it up?

21 Q. Sure. Which -- do you want the top section or this
22 middle section?

23 A. 8725.

24 Q. 8725 is the account number there?

25 A. (Moving head up and down.)

1 Q. And so that's a different account than the signature
2 page we just looked at; is that right?

3 A. When we -- when we bought Citibank, the account numbers
4 had to change.

5 Q. Okay. So it could be a different account; it could be
6 the same account?

7 A. Correct.

8 Q. But they're definitely two different numbers.

9 A. Yes.

10 Q. Okay. Thank you. I appreciate that.

11 Now, you testified that when Citibank or Truist
12 Bank detects fraudulent activity, some of the steps you
13 take are to block or flag the account, correct?

14 A. Correct.

15 Q. Was the KBKK or one of the accounts ever blocked or
16 flagged?

17 A. I don't know.

18 Q. Now, currently your own -- it's Truist Bank, correct?

19 A. Correct.

20 Q. Do you know about how much Truist Bank is worth?

21 A. No, I don't.

22 Q. Okay. Would it be safe to say that it's a
23 billion-dollar corporation at least?

24 A. I would assume.

25 Q. Okay. And with FDIC-insured -- what does

1 "FDIC-insured" mean?

2 A. It means that the government backs a certain dollar
3 amount in each account.

4 Q. Okay, it backs a certain dollar amount. And do you
5 know what that number is?

6 A. 250,000.

7 Q. In each account?

8 A. Per owner.

9 Q. Per owner, okay, per owner.

10 And is the FDIC -- that insurer, is that something
11 that's regulated by Congress? If you know.

12 A. I don't know.

13 Q. Don't know, okay.

14 Okay, ma'am. Going back to that FDIC-insured
15 status, are there certain things that you have to do to
16 maintain that FDIC-insured status?

17 A. I don't know.

18 Q. Are there certain reporting requirements and audit
19 requirements that you have to take?

20 A. Yes, there are.

21 Q. And are some of those requirements to maintain that
22 insured status some of the things that Ms. Rattan asked you
23 about, some of the fraud detection and money laundering
24 detection?

25 A. I don't know.

1 Q. And wouldn't it be true that regardless of if fraud is
2 being perpetrated or not, you have to do those things in
3 order to maintain FDIC-insured status?

4 A. I wouldn't know.

5 Q. Okay. But if so, if those are things that you have to
6 do, that would be a normal cost of business for an FDIC
7 bank; isn't that true?

8 A. Can you repeat that again?

9 Q. If those steps, those fraud prevention steps, are
10 required to maintain your status as being FDIC, then
11 whether or not fraud is occurring doesn't matter because
12 those are things you have to do anyway, correct?

13 A. Correct.

14 MR. SANDEL: Pass the witness, your Honor.

15 THE COURT: Anything additional from this witness?

16 MS. RATTAN: No, your Honor. Thank you.

17 THE COURT: Can this witness be fully excused?

18 MS. RATTAN: Yes, please.

19 MR. SANDEL: Yes, your Honor.

20 THE COURT: You are free to leave. Thank you.

21 Okay. Your next witness?

22 MS. RATTAN: Matt Wylie.

23 THE COURT: Sir, if you'll raise your right hand
24 and be sworn in.

25 THE WITNESS: I'm unable to raise my --

1 THE COURT: Oh, sorry.

2 (The oath is administered to the witness.)

3 THE COURT: Sorry about that.

4 THE WITNESS: That's okay.

5 MS. RATTAN: May I approach, your Honor?

6 THE COURT: Yes, you may.

7 MS. RATTAN: And then, your Honor, with this
8 witness I'm going to ask him to turn to his left and
9 explain his testimony; so may I provide him with a lapel
10 mic so he's not --

11 THE COURT: Yes, of course.

12 Yeah, the acoustics in here aren't very good. So
13 it's not that we couldn't hear you; it's that it makes it
14 easier.

15 MS. RATTAN: I don't know. Maybe put it on your
16 left side since you're going to turn left.

17 THE WITNESS: Does that work?

18 MS. RATTAN: Uh-huh. And then to turn it on,
19 press it; and then it will turn green. Okay. It's on.

20 Okay. May I return?

21 THE COURT: Yes.

22 DIRECT EXAMINATION OF MATTHEW WYLIE

23 CALLED ON BEHALF OF THE GOVERNMENT

24 BY MS. RATTAN:

25 Q. Please state your name.

1 A. Matthew Wylie.

2 Q. And where do you work?

3 A. FBI.

4 Q. Well, I don't know what the best thing to do is. Maybe
5 when we're talking speak closely into this microphone; and
6 then hopefully as we review your charts, you'll turn to
7 your left and this one will pick up your voice.

8 A. Okay.

9 Q. Matthew Wylie, and you work for the FBI?

10 A. Correct.

11 Q. Will you spell your name, please.

12 A. M-A-T-T-H-E-W. Last name is Wylie, W-Y-L-I-E.

13 Q. And you said you work for the FBI. Will you describe
14 for the jury what you do?

15 A. My position title is forensic accountant, so I handle
16 the financial aspect of cases.

17 Q. And what is your educational background that qualifies
18 you to work as a forensic accountant for the FBI?

19 A. I have a bachelor's degree in accounting from The
20 University of Texas San Antonio.

21 I have a master's degree in accounting from
22 Western Governors University.

23 I also have a master's degree in exercise science
24 from University of Louisiana Monroe.

25 I've also been a licensed CPA for over two years

1 and been in my current position at the FBI for three and a
2 half years. And included in that, when we're onboarded as
3 forensic accountants we go through a five-week training on
4 the fundamentals in Quantico.

5 Q. In Quantico, Virginia, FBI training?

6 A. Yes, ma'am.

7 Q. I don't know. It might be just me. But if you could
8 just raise that mic and speak into it a little more
9 closely.

10 A. Is that better?

11 Q. I think so, yes.

12 So that's your background. As a forensic
13 accountant and a CPA, can you tell the jury, what is a
14 Ponzi scheme?

15 MR. WHALEN: Your Honor, I'm going to object.

16 That calls for a legal conclusion. They haven't even laid
17 the predicate for that.

18 THE COURT: Well, if you want to maybe lay a
19 little more foundation or --

20 MS. RATTAN: Yes, your Honor.

21 BY MS. RATTAN:

22 Q. Based on your experience and your knowledge, your
23 education and your training, are you familiar with schemes
24 that are used to take money, steal money from people?

25 A. I am.

1 Q. And is one of these schemes kind of colloquially called
2 a Ponzi scheme or a pyramid scheme?

3 A. It is.

4 Q. Are you familiar with the use of Ponzi or pyramid
5 schemes?

6 A. I am.

7 Q. Have you reviewed documents and had training on exactly
8 what to look for and what these are?

9 A. I have.

10 Q. And can you explain to the jury what is a Ponzi or a
11 pyramid scheme?

12 A. Essentially, it's a scheme where money is deposited
13 from investors and then -- with the promise of a certain
14 rate of return, and that is eventually paid off with
15 additional money provided by new investors.

16 Q. So you get money from the first investor, and what do
17 you do with it?

18 A. A lot of times it's used for personal expenses. In a
19 Ponzi scheme traditionally, it's never actually invested or
20 used for the stated purpose.

21 Q. So the schemer gets money from the investor and never
22 invests it, essentially?

23 A. Correct.

24 Q. And then what else are you looking for, as a forensic
25 accountant, when you investigate a Ponzi scheme or a

1 pyramid scheme?

2 A. First looking for the uses of funds, specifically
3 are -- is it being invested, are other investors being paid
4 with those funds and, if not, what are the actual uses of
5 those funds.

6 Q. So you're looking for what happened to the money?

7 A. Correct.

8 Q. Are you looking to see whether it got invested in
9 anything?

10 A. Yes.

11 Q. And then because it's a pyramid scheme, you're also
12 looking to see were other investors paid off with that
13 money?

14 MR. WHALEN: Objection as to leading.

15 THE COURT: Just rephrase the question.

16 BY MS. RATTAN:

17 Q. Is that something that's important to look for, is a
18 red flag when you're evaluating a Ponzi scheme?

19 A. Yes, it's important.

20 Q. Now, in this case did you evaluate the accounts and
21 money that was provided to Keith Ashley?

22 A. I did.

23 Q. And did you focus on specific times when large, bulk
24 money was provided?

25 A. Yes.

1 Q. And did you analyze what happened to the bulk money?

2 A. I did.

3 Q. Now I'm going to ask you about a specific victim or
4 investor, Denny Willmon. Did you review records as it
5 related to Denny Willmon?

6 A. Yes.

7 Q. And did you prepare a chart analyzing -- or to explain
8 your analysis to the jury?

9 A. Yes.

10 Q. And will it help them in understanding what happened to
11 Mr. Willmon's money?

12 A. Yes.

13 MS. RATTAN: Your Honor, we'll offer Government's
14 Exhibit 47.

15 MR. WHALEN: Your Honor, we'd object to lack of
16 predicate.

17 THE COURT: Do you want to maybe ask him a couple
18 more follow-up questions about the creation of this
19 document?

20 MS. RATTAN: I can.

21 THE COURT: Okay.

22 BY MS. RATTAN:

23 Q. Can you explain how this document was created?

24 A. Yes.

25 So these were created by analyzing the bank

1 accounts of Mr. Ashley. When a deposit of a large sum of
2 money would come in, an accounting principle was used
3 called first in/first out because the account balance at
4 the time of these large deposits was usually very low.

5 So, for instance, if \$100,000 was deposited into
6 the account, the first \$100,000 withdrawn from the account
7 was used to come up with these figures on these charts that
8 will be shown.

9 MS. RATTAN: And, your Honor, we'll offer
10 Government's Exhibit 47.

11 MR. WHALEN: Renew my objection, your Honor.

12 THE COURT: Objection overruled. 47 will be
13 admitted.

14 MS. RATTAN: May we publish it, your Honor?

15 THE COURT: Yes, you may.

16 BY MS. RATTAN:

17 Q. So on the screen to your right but also to your left is
18 the same exhibit. It's Government's Exhibit Number 47.
19 And is this the analysis that you did on the money that was
20 provided to Keith Ashley by Denny Willmon?

21 A. Yes.

22 Q. And what amount of money was that?

23 A. \$20,000 was deposited by Denny Willmon into the KBKK,
24 LLC, BB&T account ending in 8725.

25 Q. And so the timing of your analysis, what time period

1 were you looking at?

2 A. For this one in particular, it started when the check
3 from Denny Willmon was deposited, on 3-14-2019; and the
4 funds were all used by 4-2-2019.

5 Q. Okay. And before we display the chart, you talked
6 about the accounting principle of first in/first out.

7 Looking at the chart, will you tell us how you
8 used that principle and applied it here?

9 A. Yes.

10 So immediately prior to the deposit from
11 Mr. Willmon being made, the account balance of the KBKK
12 account was \$238.25. So I used the first in/first out
13 principle because there weren't any -- there weren't
14 sufficient funds to make these withdrawals that you see on
15 here with the prior balance.

16 MS. RATTAN: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 BY MS. RATTAN:

20 Q. So the first thing you're looking at, I guess, is the
21 fact that Denny Willmon provided \$20,000; is that right?

22 A. Correct.

23 Q. So let me show you what's previously been admitted as
24 Government's Exhibit 45A.

25 So that is Denny Willmon writing a check for

1 \$20,000 to KBKK; is that right?

2 A. Correct.

3 Q. And this is the \$20,000 that Mr. Willmon provided that
4 you're analyzing?

5 A. Yes.

6 Q. And the check is deposited on March 14th of 2019?

7 A. Yes.

8 Q. And your analysis is from March of 2019 to April of
9 2019?

10 A. Yes.

11 Q. So it looks like roughly a two-week period?

12 A. Correct.

13 Q. And then as far as the first in/first out, what was the
14 account balance when the \$20,000 from Mr. Willmon went in?

15 A. \$238.25.

16 Q. And that's right here, account balance?

17 A. Correct.

18 Q. So you show the \$20,000 going in; and there is not much
19 money in the account when Mr. Willmon's money comes in?

20 A. Correct.

21 Q. So what happens with Mr. Willmon's \$20,000?

22 Did you see any investments going to
23 SmartTrust UIT?

24 A. No.

25 Q. Did you see any investments on behalf of Mr. Willmon

1 going anywhere?

2 A. No.

3 Q. Tell us what you saw happening to the money.

4 A. I saw \$7,075 be transferred to a account titled "Keith
5 or Brandi Ashley" at Bank of America.

6 Q. Now, as part of this \$7,075 was there a wire sent?

7 A. I believe so.

8 Q. And then that would have been a wire from the BB&T
9 account to the BoA account; is that right?

10 A. Correct.

11 Q. And that's Bank of America?

12 A. Yes.

13 Q. So you saw the 20,000 come in and 7,000, roughly, goes
14 over to Keith Ashley's Bank of America account?

15 A. Yes.

16 Q. What else did you see?

17 A. I saw \$2,072 be spent at casinos.

18 Q. So money going to casinos. And that's from
19 Mr. Willmon's money; is that right?

20 A. Yes.

21 Q. What else?

22 A. \$2,043 was sent to James Seegan.

23 Q. Now, was this significant, the fact that \$2,000,
24 approximately, was sent to James Seegan?

25 A. Yes.

1 Q. And did you use that fact in analyzing whether this was
2 a Ponzi or a pyramid scheme?

3 A. Yes.

4 Q. How was that significant?

5 A. Because James Seegan also deposited large sums of money
6 with Mr. Ashley.

7 Q. And did similar things happen to Mr. Seegan's money?

8 A. Yes.

9 Q. So you immediately see that Denny Willmon's money is
10 going to someone else who appears to be an investor with
11 Keith Ashley; is that right?

12 A. Correct.

13 Q. Did you see any other investors being paid with
14 Mr. Willmon's money?

15 A. I did.

16 Q. And who did you see?

17 A. Leonid Shteyngart.

18 Q. And that was about \$1,664?

19 A. Correct.

20 Q. So at this point \$7,000 had gone to his personal
21 banking account that he shares with his wife; and then you
22 see he's gambling and he's paying off other investors?

23 A. Yes.

24 Q. What else do you see?

25 A. He also transferred \$6,000 to another KBKK account at

1 Commercial Bank of Texas.

2 Q. And that's right here?

3 A. Correct.

4 Q. And then what's happening here on the right side of the
5 slide, Government's Exhibit 47?

6 A. Then those funds were used to pay off brewery expenses
7 and also credit cards.

8 Q. You say "brewery expenses." What are you talking about
9 there?

10 A. Mr. Ashley owned the Nine Band Brewery in Allen, and
11 those funds were used to pay for expenses related to that
12 brewery.

13 Q. And, again, this is all within that two-week period
14 after Mr. Willmon has provided his money; is that right?

15 A. Correct.

16 Q. What else did you determine happened to Mr. Willmon's
17 money?

18 A. Also \$562 was returned to Mr. Willmon, of his own
19 money.

20 Q. Is that something that you will see in a pyramid or
21 Ponzi scheme?

22 A. Yes.

23 Q. Explain that.

24 A. The funds deposited by the investor are usually paid to
25 pay back old investors as well as that investor, that same

1 investor, to basically keep them on the line and keep them
2 happy and thinking that they're getting a return on their
3 investment.

4 Q. And then what did you see down here, in the bottom
5 right corner of the analysis?

6 A. From the KBKK account at BB&T, \$181 was used to pay off
7 credit cards as well.

8 Q. And then what is this \$2,271?

9 A. Another \$2,271 was used from the KBKK account at
10 Commercial Bank of Texas to also pay off credit cards.

11 Q. Okay. So you've got about twenty-two -- almost \$2,500
12 going to credit cards. But you've also got, from this
13 \$7,000 transfer to his Bank of America account, another
14 payment to the credit cards over here; is that right?

15 A. Correct.

16 Q. And these were all Keith Ashley's credit cards?

17 A. Correct.

18 Q. So you've got five -- a little over \$7,000 going to pay
19 on his credit cards from Mr. Willmon's money?

20 A. Yes.

21 Q. And then here, on the far left side of Government's
22 Exhibit 47, what's happening?

23 A. \$1,500 was used to pay off his mortgage; and \$1,000 was
24 used for medical expenses.

25 Q. And that's the \$1,500 on his own mortgage and \$1,000 on

1 medical?

2 A. Yes.

3 Q. Were you able to determine whether any of Mr. Willmon's
4 \$20,000 was invested?

5 A. Yes. It was not.

6 Q. Okay.

7 MS. RATTAN: May I return, your Honor?

8 THE COURT: Yes.

9 MS. RATTAN: I'll pass the witness.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION OF MATTHEW WYLIE

12 BY MR. WHALEN:

13 Q. Good morning. How are you?

14 A. Good morning. Doing well.

15 MR. WHALEN: If we could bring that exhibit back
16 up, that would be great.

17 BY MR. WHALEN:

18 Q. Okay. So -- just so I understand, in your creating of
19 this chart, what all documents did you look at in order to
20 create this chart?

21 A. I looked at the bank statements for the KBKK, LLC, BB&T
22 account ending in 8725 as that was the account that the
23 funds were deposited into.

24 And then I also looked at Keith or Brandi Ashley
25 Bank of America account ending in 4804 since transfers were

1 made to that account.

2 And then I looked at the KBKK, LLC, Commercial
3 Bank of Texas account ending in 4943 as funds were also
4 transferred to that account.

5 Q. Okay. And so when you're reviewing the documents,
6 reviewing the bank records, are you looking at checks and
7 also what the entries are of who they're paid to, correct?

8 A. Yes.

9 Q. So if we take, for instance, credit cards, you're just
10 seeing a payment to whatever credit card, correct?

11 A. Yes.

12 Q. Did you ever look at the credit card statement?

13 A. No.

14 Q. Okay. So as it relates to the credit cards, same with
15 the casinos, you're just seeing a payment to a casino. You
16 don't know what it was used for, correct?

17 A. Correct.

18 In my experience, though, payments to casinos and
19 credit cards are not traditional investment vehicles.

20 Q. Okay. That wasn't my question.

21 A. Okay.

22 Q. You don't know what it was for?

23 A. Correct.

24 Q. Okay. So when you just say it's a casino, that's all
25 you're saying that chart says is \$2,000 and -- \$2,072 went

1 to a casino, correct?

2 A. Correct.

3 Q. Now, you also indicated -- show business expenses,
4 correct?

5 A. Correct.

6 Q. Okay. The check was made out to KBKK, LLC, correct?

7 A. Yes.

8 Q. Okay. And an LLC is a type of entity, correct?

9 A. Yes.

10 Q. Okay. And is it normal for LLCs -- or people who own
11 businesses to create LLCs?

12 A. It is.

13 Q. Okay. And also LLCs generally are treated as an
14 S corp, correct, for tax purposes, correct?

15 A. Yes.

16 Q. And LLCs can then be a flow-through to a -- so if
17 someone takes a distribution from an LLC, that's a
18 flow-through to their personal tax return, correct?

19 A. Yes.

20 Q. And they pay taxes on that, correct?

21 A. Uh-huh, yes.

22 Q. Okay. So if I'm an owner of an LLC and I make money or
23 profit, I can take a distribution from the LLC, correct?

24 A. Yes.

25 Q. Okay. And KBKK, you learned, also owned Nine Band

1 Brewery, correct?

2 A. Yes.

3 Q. Okay. So if money is going into the business expenses,
4 you determined that is going to Nine Band Brewery, correct?

5 A. Yes.

6 Q. That is a business, correct?

7 A. Yes.

8 Q. That existed, correct?

9 A. Yes.

10 Q. Okay. If money is being put into the brewery, that can
11 make money to then pay and give a return to people who
12 invested in KBKK, correct?

13 A. Yes.

14 Q. And all the checks you looked at as relates to the
15 \$20,000 and others, they went to KBKK, LLC, correct?

16 A. Correct.

17 Q. Okay. And Nine Band Brewery was a viable business
18 working to make a profit, correct?

19 A. I don't know if I would characterize it as viable, but
20 yes.

21 Q. Okay. But it's a business, right?

22 A. It is.

23 Q. And everybody is in business to make a profit, correct?

24 A. Yes.

25 Q. Okay. So would it be logical that you spend money in

1 order to invest in a business to make a profit?

2 A. Yes.

3 Q. Okay. And also is it normal for businesses to use
4 money or loans in order to have capital to run the
5 business?

6 A. Yes.

7 Q. And so as far as your analysis, you just looked at it
8 from this time frame from March 14th of 2019 to April 2nd,
9 correct?

10 A. Yes, because that's the -- I chose that time frame
11 because that's the time it took to use the \$20,000 from
12 Mr. Willmon.

13 Q. Okay. And James Seegan and Mr. Shteyngart, they wrote
14 checks directly to KBKK, correct?

15 A. Yes.

16 Q. So it would make sense that if they wrote checks to
17 KBKK, that money would come out of KBKK back to them.
18 Would you agree with that?

19 A. It depends on what was told to them about their
20 investment.

21 Q. Okay. And that, you don't know.

22 A. Correct.

23 MR. WHALEN: I'll pass the witness.

24 THE COURT: Anything additional?

25 MS. RATTAN: Just briefly.

1 REDIRECT EXAMINATION OF MATTHEW WYLIE

2 BY MS. RATTAN:

3 Q. Did you see anything going out of this account from the
4 money Denny Willmon sent going to SmartTrust UIT?

5 A. I did not.

6 MS. RATTAN: May I approach, your Honor?

7 THE COURT: Yes.

8 BY MS. RATTAN:

9 Q. And on this business theory, the only amount that went
10 to the business is this right here, \$3,700; is that right?

11 A. Correct.

12 Q. The rest went to personal account, mortgage, medical
13 expenses, casinos, other victims, and credit cards; is that
14 right?

15 A. Correct.

16 MS. RATTAN: I'll pass the witness.

17 THE COURT: Anything else?

18 RECROSS-EXAMINATION OF MATTHEW WYLIE

19 BY MR. WHALEN:

20 Q. Mr. Wylye, as it relates to the credit cards, is it
21 fair to say people can use credit cards to then fund their
22 business and consider it a personal distribution or a cash
23 contribution to their business?

24 A. It is.

25 Q. Okay. And so then if they get money into that, LLC,

1 they can use that to pay off their credit cards to repay
2 themselves for their cash contribution to the business?

3 A. Yes.

4 Q. And were you aware or do you know if there was any
5 other businesses that he owned or breweries that he owned?

6 A. Other businesses, yes. Other breweries, no.

7 Q. You're not aware of that?

8 A. Correct.

9 MR. WHALEN: I'll pass the witness.

10 THE COURT: Can this witness be fully excused?

11 MS. RATTAN: Not fully, your Honor.

12 THE COURT: Okay. So, sir, you are subject to
13 recall. Thank you.

14 What's next, Ms. Rattan?

15 MS. RATTAN: Your Honor, the United States calls
16 Leonid Shteyngart.

17 THE COURT: Sir, if you'll raise your right hand
18 to be sworn in.

19 (The oath is administered to the witness.)

20 THE COURT: Go ahead and proceed.

21 DIRECT EXAMINATION OF LEONID SHTEYNGART

22 CALLED ON BEHALF OF THE GOVERNMENT

23 BY MS. RATTAN:

24 Q. Please state your name.

25 A. Leonid Shteyngart.

1 Q. Will you spell your name, please.

2 A. L-E-O-N-I-D. Last name is S-H-T-E-Y-N-G-A-R-T.

3 Q. It's really difficult to hear in here and you may feel
4 like you are awkwardly close to the microphone, but if you
5 could get very close to the microphone.

6 A. Okay, sure.

7 Q. Okay. That's better.

8 Mr. Shteyngart, can you tell us where you work?

9 What do you do?

10 A. I'm a registered nurse, RN.

11 Q. How long have you been a registered nurse?

12 A. About 22 years.

13 Q. Around when were you registered? Around 1999?

14 A. Yes. I graduated from nursing school that year.

15 Q. And did you immigrate to the United States?

16 A. Yes, in 1994.

17 Q. Where did you emigrate from?

18 A. Moscow.

19 Q. Russia?

20 A. Yes.

21 Q. When you were in Russia, did you have any educational
22 background or training there?

23 A. Yes. I was medical student of second -- two years,
24 medical student.

25 Q. So in Russia you were a medical student?

1 A. And paramedic before.

2 Q. Pardon?

3 A. I was a paramedic before I went to medical school in
4 Russia.

5 Q. A paramedic?

6 A. Uh-huh.

7 Q. And then you immigrated to the United States and you
8 trained in nursing here?

9 A. Uh-huh, in The University of Texas at Arlington, UTA.

10 Q. And what type of nursing do you do?

11 A. Only ER, emergency room nursing.

12 Q. And where do you work?

13 A. I work in two hospitals, Baylor Plano and Baylor
14 Frisco.

15 Q. And if you could just move a little closer to the
16 microphone. I know.

17 So you work at two hospitals, Baylor Plano and
18 Baylor Frisco?

19 A. Correct.

20 Q. At some point in your nursing career, did you meet
21 someone by the name of Keith Ashley?

22 A. Yes, I did.

23 Q. How was it that you met him?

24 A. At that time I was working in different hospital, which
25 is now Medical City McKinney. And I worked there, and I

1 met him over there.

2 Q. So you met him. Was he a nurse as well?

3 A. He was a paramedic tech in the ER.

4 Q. And what would he do as a paramedic tech in the ER?

5 A. He was helping nurses, doing some assigned duties and
6 taking care of patients.

7 Q. At some point did you talk to him or did he talk to you
8 about investments?

9 A. Yes, uh-huh.

10 Q. Can you explain what happened?

11 A. He introduced me to the life insurance policy that
12 eventually would give -- will grow with profit, like with
13 some sort of interest or benefit.

14 Q. And did you do? Did you buy that?

15 A. Uh-huh, yes, I did. I invested at that time.

16 Q. At some point did he talk to you about other
17 investments?

18 A. Several years after that, he told me that there is
19 different opportunities with even more profit.

20 Q. He told you about different opportunities?

21 A. Different financial opportunities and better
22 investments.

23 Q. Okay.

24 A. Plans.

25 Q. And did you do that as well?

1 A. Yes, uh-huh.

2 Q. And so you moved -- or provided money for another
3 investment --

4 A. Right.

5 Q. -- to Keith Ashley; is that right?

6 A. Yeah. Since it was later, after, I was able to
7 accumulate some funds that he advised me to move to
8 different investments that would give better return.

9 Q. Did he talk to you about a UIT investment?

10 A. Yeah. I believe that's what he called this type of
11 investment.

12 Q. Okay. So he told you that there was a UIT investment
13 available?

14 A. Correct, yeah, uh-huh.

15 Q. And he talked to you about the return that would be
16 available or how much money you would get on the UIT
17 investment?

18 A. Right. He told me about between 8 to 9 percent.

19 Q. 8 to 9 percent return --

20 A. Uh-huh.

21 Q. -- if you did the UIT investment with him?

22 A. Right.

23 Q. Well, did you do that?

24 A. I did, uh-huh.

25 Q. What happened? What did you do? How exactly did you

1 invest in that?

2 A. First, he just moved money from life policy. I think
3 first it was -- I believe that it was Prudential, like just
4 mutual fund. And then from mutual fund to the UITs.

5 Q. Okay.

6 A. And then I made several installments throughout the
7 years. I think since 2015 I made some contribution to UIT
8 since it was doing so well according to him.

9 Q. So according to him, the UIT was doing well; so you
10 made additional investments in the UIT?

11 A. Correct.

12 Q. Now, did you ever give Keith Ashley any money to invest
13 in anything other than the UIT?

14 A. I don't believe I did.

15 Q. Did you ever give him any money for personal use?

16 A. No. That's certainly not the case, no.

17 Q. Did you believe that your money was being invested in
18 this UIT investment?

19 A. Yeah. I hundred percent believed in it.

20 Q. How much money did you lose with Keith Ashley that you
21 thought was being invested in this UIT investment?

22 A. I believe close to \$130,000.

23 Q. \$130,000?

24 A. Uh-huh.

25 Q. At some point did you text with Keith Ashley about your

1 investments?

2 A. Certain times that payments was late and I was just
3 texting him to get clarification, then the money would
4 appear in my banking account. And sometimes I would get a
5 text offers from him about better opportunities and
6 reinvestments.

7 Q. So sometimes he would ask you about investing money;
8 but sometimes you would follow up with him and say, hey,
9 the money is late?

10 A. Yeah, couple days. Couple days. I was just making
11 sure that, you know, it's not some --

12 Q. That there wasn't a problem?

13 A. Right, uh-huh.

14 Q. Okay.

15 A. But always -- it was always resolved.

16 Q. Always resolved?

17 A. Always resolved, yes.

18 Q. And when you say it was always resolved, how would it
19 get resolved?

20 A. After I would talk to him, money would be appearing on
21 my checking account.

22 Q. Okay.

23 MS. RATTAN: May I approach the witness, your
24 Honor?

25 THE COURT: Yes.

1 MS. RATTAN: May I return?

2 THE COURT: Yes.

3 BY MS. RATTAN:

4 Q. So, Mr. Shteyngart, I just reviewed with you exhibits;
5 and you indicated that you recognized them. Were those
6 texts that you traded with Keith Ashley?

7 A. Yes, uh-huh.

8 Q. You texted with him?

9 A. Uh-huh.

10 Q. And all -- that was Government's Exhibit 42B.

11 And then I showed you checks which were
12 Government's Exhibit 43A; is that correct?

13 A. Yes.

14 Q. And you can identify both of those?

15 A. Right, uh-huh.

16 Q. So that would be Government's Exhibit 42B and 43A and
17 B; is that right?

18 A. Correct.

19 MS. RATTAN: Your Honor, we'll offer those,
20 Government's Exhibit 42B and 43A and B.

21 MR. WHALEN: No objection.

22 THE COURT: Okay. 42B will be admitted as well as
23 43A and B.

24 MR. WHALEN: No objection.

25 MS. RATTAN: And then may we publish 42B?

1 THE COURT: Yes, you may.

2 BY MS. RATTAN:

3 Q. And, Mr. Shteyngart, over to your left -- I don't know
4 if you can see that. It's the same thing that's in the
5 book in front of you. I'm going to ask you about this part
6 right here.

7 These are text messages between you and Keith
8 Ashley; is that right?

9 A. Yes, I believe so, uh-huh.

10 Q. It is?

11 And this would be in March of 2019; is that right?

12 A. Right.

13 Q. And this says that it's from Keith Ashley?

14 A. Uh-huh.

15 Q. Did you let law enforcement review your phone and take
16 information out of your phone?

17 A. Yes, I did, uh-huh.

18 Q. So this, March 12th of 2020 (*sic*), it's from Keith
19 Ashley and he's saying, "Are you interested in 24 month UIT
20 I spoke to you about?"

21 So can you explain what's going on here?

22 A. Because, like I said, he would present me with new
23 opportunities to invest more money. So I think that
24 email (*sic*) was about asking for more investment.

25 Q. So asking --

1 A. Giving me chance to invest more.

2 Q. Okay. Put more money in?

3 A. Right, put more money in.

4 Q. So at this point you'd already put money in, and he's
5 just telling you here is an opportunity and you can put
6 some more money in; is that right?

7 A. Right, more money or I believe, if I remember
8 correctly, reinvest the previous funds, because he told me
9 that certain UITs would expire and I have to, like, renew
10 them.

11 Q. Okay. So rather than --

12 A. And would you like to add more money into the accounts.

13 Q. So rather than taking your UIT back or your money back,
14 he just wanted you to reinvest it?

15 A. I believe so, uh-huh.

16 MS. RATTAN: Now let's look at page 2 of
17 Government's 42B. 42B, page 2.

18 BY MS. RATTAN:

19 Q. And this is part of the incoming to you from Keith
20 Ashley on March 21st of 2019. And here Keith Ashley is
21 telling you, "I believe 8-9%. I will check once I get home
22 tonight at office."

23 So what's going on here?

24 A. If I remember correctly, maybe I was asking him about
25 what kind of interest, is this going to be the same

1 interest or not. I don't hundred percent remember that
2 particular email (*sic*) -- I mean the texts, but we were
3 just -- it was for clarification of terms.

4 Q. On the UIT investment?

5 A. On UIT investment. Sorry, uh-huh.

6 Q. And here it says 8 to 9 percent?

7 A. Right, yeah. It has always been around that interest,
8 like that.

9 Q. That's what he told you?

10 A. Uh-huh, yes, correct.

11 Q. And then you looked at two checks that you've provided
12 to Keith Ashley; is that right?

13 A. Yeah.

14 Q. And those are Government's Exhibits 43A and 43B. And
15 you recognize those as checks that you provided to him?

16 A. Oh, yes, uh-huh.

17 MS. RATTAN: Your Honor, we'll offer Government's
18 Exhibit 42A and B.

19 THE COURT: Well, B is already admitted so --

20 MS. RATTAN: Oh, rather, pardon me, 43A and B.

21 THE COURT: You already did, and I've already
22 admitted those.

23 MS. RATTAN: And then may we publish Government's
24 Exhibit 43A?

25 THE COURT: Yes, you may.

1 BY MS. RATTAN:

2 Q. Mr. Shteyngart, can you explain what this is for the
3 jury?

4 A. Was checks written in addition to that money was
5 already in UITs. So I added more money, presumably for
6 more profit.

7 Q. And then that's you, of course. That's your name; is
8 that right?

9 A. Yes, uh-huh.

10 Q. And then that's the date, 8-17 of 2018?

11 A. Yep. It's my personal check. Both of them is copy of
12 my personal checks.

13 Q. And then you made the check out to KBKK; is that right?

14 A. Right, uh-huh.

15 Q. And it's for \$25,000?

16 A. Yes.

17 MS. RATTAN: And then if we can look at
18 Government's Exhibit 43B, page 1.

19 BY MS. RATTAN:

20 Q. Is this another check that you made out to KBKK?

21 A. Correct.

22 Q. And this one was in 2019. It looks like October 17th
23 of 2019.

24 A. It was December, yes.

25 Q. Oh, rather, 12.

1 A. Uh-huh, 12-10-19.

2 Q. Okay. 12-10-19.

3 And that's for \$20,000?

4 A. Correct, yes.

5 Q. And it's to KBKK as well?

6 A. Uh-huh.

7 MS. RATTAN: May I approach, your Honor?

8 THE COURT: Yes, you may.

9 BY MS. RATTAN:

10 Q. And this is Government's 43A.

11 MS. RATTAN: If we can publish Government's 43A.

12 BY MS. RATTAN:

13 Q. Let me ask you if this is a big copy, a blown-up copy
14 of the check you wrote to KBKK?

15 A. Yes. It's my handwriting and my --

16 Q. And that's your account?

17 A. And my check, uh-huh.

18 Q. And it was for \$25,000?

19 A. Correct.

20 MS. RATTAN: May I return, your Honor?

21 THE COURT: Yes.

22 BY MS. RATTAN:

23 Q. Now, you knew Keith Ashley and you worked with him as a
24 nurse and you knew that he worked at the hospital; is that
25 correct?

1 A. Uh-huh, yeah, at hospital and also in a care -- not
2 care flight but flight ambulance, like a helicopter.

3 Q. And are these emergency-type situations when you're
4 using a helicopter, a care flight helicopter?

5 A. Not me, him. He was working on helicopter as a
6 nurse/paramedic.

7 Q. And would that mean that it's kind of an emergency
8 situation when you're working on a helicopter, that he is?

9 A. I assume. I assume so. It's very intense, yes.

10 Q. Yes.

11 Do you see Keith Ashley in the courtroom today,
12 who you invested this money with?

13 A. Right.

14 Q. Can you point to him and identify him?

15 A. Right there (indicating).

16 Q. If this is Person Number 1 right here, 2, 3, and 4, who
17 person number would he be?

18 A. Number 4.

19 MS. RATTAN: Your Honor, may the record reflect
20 that the witness has identified the defendant, Keith Todd
21 Ashley?

22 THE COURT: The record will so reflect.

23 MS. RATTAN: And I'll pass the witness.

24 THE COURT: Cross-examination?

25 *

1 CROSS-EXAMINATION OF LEONID SHTEYNGART

2 BY MR. WHALEN:

3 Q. Mr. Shteyngart, how are you today?

4 A. Well. Good morning.

5 Q. Just so I'm clear, the check that you sent in December
6 of 2019 for \$20,000, was that the last check you sent to
7 Mr. Ashley?

8 A. Yes, I did. I did not send it; I gave it to him in
9 person.

10 Q. You gave it to him?

11 A. Uh-huh.

12 Q. Okay. And you always gave him checks, correct?

13 A. Yes.

14 Q. Okay. And those -- both of those checks were made out
15 to KBKK, correct?

16 A. Correct.

17 Q. Okay. And so when did you first meet him?

18 A. I believe 2002.

19 Q. Okay. And did you know about the brewery?

20 A. Never knew until the police told me.

21 Q. When did you first learn about it?

22 A. From Carrollton PD, about two years ago.

23 Q. Okay. When was the first time Carrollton contacted
24 you, PD?

25 A. I think about end of August 2020.

1 Q. Okay. But on 2019, that was the last check you sent,
2 correct?

3 A. Correct.

4 Q. Okay. And we saw this communication in your cell phone
5 from March of 2019, correct?

6 A. Uh-huh, yes.

7 Q. Okay. And did you have anything or anything in writing
8 or a contract or anything as related to this what you
9 referred to as a UIT?

10 A. No.

11 Q. No, okay.

12 MR. WHALEN: I'll pass the witness.

13 THE COURT: Anything else?

14 MS. RATTAN: No, your Honor.

15 THE COURT: Can this witness be fully excused?

16 MS. RATTAN: Yes, please.

17 THE COURT: Mr. Whalen?

18 MR. WHALEN: Yes.

19 THE COURT: Sir, you are free to leave. Thank
20 you.

21 Okay. Your next witness?

22 MS. RATTAN: The United States recalls Matt Wylie.

23 THE COURT: Mr. Wylie, you understand you're still
24 under oath?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. Go ahead, Ms. Rattan.

2 MS. RATTAN: Thank you, your Honor.

3 DIRECT EXAMINATION OF MATTHEW WYLIE

4 RECALLED ON BEHALF OF THE GOVERNMENT

5 BY MS. RATTAN:

6 Q. Please state your name again.

7 A. Matthew Wylye.

8 Q. Okay. And, of course, you just testified; and you're
9 with the FBI as a forensic accountant?

10 A. Correct.

11 Q. Let me ask you if you did a forensic analysis on money
12 that was provided to Keith Ashley by Leonid Shteyngart.

13 A. I did.

14 Q. And were you able to reach some conclusions based on
15 your analysis of his money?

16 A. Yes.

17 Q. And then have you prepared charts to assist the jury in
18 understanding your analysis?

19 A. Yes.

20 Q. And you analyzed two different amounts of money that he
21 provided. One was \$25,000 and one was \$20,000; is that
22 right?

23 A. Correct.

24 MS. RATTAN: May I approach the witness, your
25 Honor?

1 THE COURT: Yes.

2 BY MS. RATTAN:

3 Q. Let me show you Government's Exhibit 43A. This is a
4 blowup of one of the checks that Mr. Shteyngart gave to
5 Keith Ashley, KBKK; and it says "\$25,000."

6 Is this part of what you analyzed?

7 A. Yes.

8 Q. Okay. So you did a \$20,000 analysis and a \$25,000
9 analysis?

10 A. Correct.

11 MS. RATTAN: May I return, your Honor?

12 THE COURT: Yes.

13 BY MS. RATTAN:

14 Q. So let's focus first on Government's Exhibit 44A.

15 MS. RATTAN: If we can -- we'll offer 44A and 44B,
16 your Honor.

17 THE COURT: Any objection?

18 MR. WHALEN: Predicate, your Honor.

19 THE COURT: Well, if you want to just follow up
20 with a couple more questions.

21 BY MS. RATTAN:

22 Q. Did you use the same forensic accounting techniques
23 that you described in your previous testimony when you did
24 the analysis on the money that was provided by Denny
25 Willmon?

1 A. Yes.

2 Q. Can you explain what you did, what technique you used
3 when you analyzed the money that Mr. Shteyngart provided?

4 A. So same as the previous one. I used the first in/first
5 out method to take the deposit that was made and then the
6 first, in this instance, \$25,000 out of the account. I
7 took those totals and put them in a chart to illustrate how
8 the funds were used.

9 MS. RATTAN: Your Honor, based on that, we'll
10 offer Government's Exhibit 44A and 44B.

11 MR. WHALEN: Same objection.

12 THE COURT: Okay. Overruled. 44A and B will be
13 admitted.

14 MS. RATTAN: If we can publish Government's
15 Exhibit 44A.

16 THE COURT: Yes.

17 BY MS. RATTAN:

18 Q. Can you explain to us what this is?

19 A. So this is a chart illustrating the \$25,000 check that
20 was deposited into KBKK, LLC, account at BB&T ending in
21 8725 from Mr. Shteyngart.

22 And then it shows the uses of those \$25,000.

23 MS. RATTAN: And then if I can approach?

24 THE COURT: Yes.

25 *

1 BY MS. RATTAN:

2 Q. If we can just look at the chart here. You've got the
3 dates that you analyzed. Of course, the check is dated
4 August 17th of 2018; and so you began your analysis around
5 when the check was deposited or received?

6 A. Yes. It was also deposited on the 17th.

7 Q. Okay. So same day?

8 A. Correct.

9 Q. So your analysis goes from 8-17 to 8-23, so that's
10 about a week.

11 A. Correct.

12 Q. So this time how much money was in the account when you
13 began your analysis?

14 A. So immediately prior to the deposit from
15 Mr. Shteyngart, the account balance was \$5,829.09.

16 Q. So how did you handle that?

17 A. So I handled this one the same way. The \$25,000 was
18 deposited; and then I took the first \$25,000 out of the
19 account to illustrate these uses.

20 Q. And what did you see here?

21 A. I saw the largest outflow was \$14,363 was sent to Fred
22 Reeves.

23 Q. And then what happened with this \$9,000?

24 A. It was spent at casinos.

25 Q. And then you had \$1,000 go where?

1 A. To another account owned by Mr. Ashley. It was titled
2 "Keith Ashley D/B/A NTMM," and that was a Chase account
3 ending in 2589.

4 Q. And did you see anytime in here that any of this was
5 invested with a SmartTrust UIT investment?

6 A. No.

7 MS. RATTAN: And now if we can publish the other
8 chart. I think it's 43B -- or, rather, 44B.

9 BY MS. RATTAN:

10 Q. Is this analysis of another amount of money that
11 Mr. Shteyngart gave to Keith Ashley?

12 A. It is.

13 Q. And this is \$20,000?

14 A. Yes.

15 Q. So what time period are you looking at over here?

16 A. So the check was deposited on 12-10-2019; and I
17 analyzed from that date, 12-10-2019, to 12-31-2019.

18 Q. So a fairly short time period.

19 A. Yes.

20 Q. And the account balance at this time, when the \$20,000
21 came in, was what?

22 A. The account balance immediately prior to the deposit
23 from Mr. Shteyngart was \$286.75.

24 Q. And then following the money, did you see that another
25 investor was paid?

1 A. Yes.

2 Q. And did that concern you in terms of what we were
3 talking about a Ponzi scheme or a pyramid scheme?

4 A. Yes, it did.

5 Q. And why is that?

6 A. Because other investors are being paid with investor
7 money.

8 Q. Okay. So you saw about \$4,181 goes to James Seegan;
9 and then you saw a cash withdrawal of how much?

10 A. \$2,750.

11 Q. And then tracking over here to the right side of the
12 slide, what's going on?

13 A. \$2,600 was transferred to another account owned by
14 Mr. Ashley titled "KBLIS1996, LLC."

15 Q. And then out of that account, what happened?

16 A. Out of that account \$1,300 was withdrawn in cash and
17 \$1,300 was used to make checks payable to Keith Ashley.

18 Q. So that's the right side of the chart. You've got the
19 account balance very low. The \$20,000 comes in.

20 And here again you've got the return. You've
21 noted 1,664. What is that?

22 A. That was the amount returned to Mr. Shteyngart from his
23 own money.

24 Q. Okay. And, again, is that something that you commonly
25 see in a scheme?

1 A. It is.

2 Q. So rather than going into any investment, some money
3 goes back to the purported investor?

4 A. Correct.

5 Q. We've got essentially two investors getting money back?

6 A. Yes.

7 Q. So then going over to the left side of the screen, walk
8 us through your analysis here.

9 A. So I saw \$8,588 he transferred from the KBKK, LLC,
10 account to the Bank of America account titled "Keith or
11 Brandi Ashley" ending in 4804.

12 Q. And that's the one that we saw money going into before
13 from the Mr. Willmon investment?

14 A. Correct.

15 Q. And what happened with this \$8,500 from the victim?

16 A. \$2,910 was spent towards a personal mortgage payment;
17 and then \$3,003 was sent to another Bank of America account
18 titled "Kade, Brandi or Keith Ashley."

19 Q. And then, of course, out of that account what do you
20 have?

21 A. \$339 was spent on various retail restaurant payments;
22 and \$1,842 was withdrawn in cash.

23 Q. So then cash, I guess, coming out of this victim's
24 investment -- you've got three different instances of cash?

25 A. Correct.

1 Q. And also a check made payable to Keith Ashley?

2 A. Correct.

3 Q. But just focusing on the cash that came out, you've got
4 roughly 3,000, 4,000 -- almost \$6,000. Is that fair to
5 say?

6 A. Correct.

7 Q. So out of this victim's investment money, \$6,000, it
8 looks like, in cash went to Keith Ashley?

9 A. Correct.

10 Q. And then the rest would just be to his mortgage,
11 retail, entertainment, and another victim; is that right?

12 A. Correct.

13 MS. RATTAN: May I return, your Honor?

14 THE COURT: Yes.

15 MS. RATTAN: I'll pass the witness.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION OF MATTHEW WYLIE

18 BY MR. WHALEN:

19 Q. Mr. Wylye, how are you again?

20 A. Doing well still.

21 Q. Okay.

22 A. How about yourself?

23 Q. I'm doing great.

24 Let me ask you this: When you go through this
25 process, does the agent just give you the documents and

1 say, "Do an analysis and let me know what you find"; or do
2 they direct you and tell you what they're looking for?

3 A. They do not direct me.

4 Q. Okay. And so what information are you provided before
5 you look at these records?

6 A. So I did research and analysis to identify which
7 accounts Mr. Ashley has. We subsequently gained those
8 accounts through subpoena, and then I analyzed those
9 accounts to come to these charts and conclusions.

10 Q. Okay. So what you're telling me is you have no
11 information on why you're requesting these?

12 A. I wouldn't say "no information."

13 Q. Okay. But you do have some information?

14 A. Yes.

15 Q. There is an investigation, right? You do know that.

16 A. Correct.

17 Q. Okay. And then your office, you're in the -- are you
18 in the same building as the FBI headquarters in Dallas?

19 A. I'm in Dallas, yes.

20 Q. Okay. And so this time frame that you looked at as --
21 who directed you to just break it down to a week? Was that
22 your choice or --

23 A. It was my choice because that's how long it took the
24 \$20,000, in this instance from Mr. Shteyngart, to be
25 depleted.

1 Q. Okay. And in the one example there was a beginning
2 balance of \$5,000 -- or over \$5,000.

3 A. Correct.

4 Q. Did you go back and look to see what the sources were
5 of that \$5,000?

6 A. So from an analysis done on the account done as a
7 whole, almost primarily it was funded by checks from
8 investors.

9 Q. Okay. And all those checks were made out to KBKK?

10 A. Correct.

11 Q. Okay. And they all came in, a majority of them, in the
12 form of checks, not a wire transfer, correct?

13 A. There were a few wires as well.

14 Q. Okay. But Mr. Shteyngart was all checks, correct?

15 A. Correct.

16 Q. And Mr. Willmon was all checks, correct?

17 A. Correct.

18 Q. They did not come in as a wire transfer, correct?

19 A. Not the ones we talked about, no.

20 Q. Okay.

21 MR. WHALEN: I'll pass the witness.

22 THE COURT: Anything else?

23 MS. RATTAN: No, your Honor.

24 THE COURT: Is this witness subject to recall
25 again or --

1 MS. RATTAN: Yes.

2 THE COURT: Okay. Sir, you are subject to recall;
3 but you can leave now.

4 We're going to go ahead and break for lunch.

5 Before I do, I have been notified that we have some cars
6 that are parked in the lot east of the courthouse on the
7 northeast corner of Pecan and Walnut. They are not --
8 that's not a permissible place to park, and the owner is
9 indicating they will tow the vehicles. The license plate
10 numbers are LLT4336, a white Ford car. Then the other one
11 is NJW2110, a white Honda car. Then there is a government
12 vehicle, Elantra, license plate 2698X. So I would just
13 advise you over the lunch hour, move those and don't park
14 back in that lot. If any of those cars are the jurors',
15 just ask court security officer and, you know -- because
16 you can actually park on the street with your juror placard
17 put in the thing and you won't get a ticket.

18 Okay. So, again, please don't discuss the case
19 among yourself or anyone else. Go have a good lunch and --
20 again, don't do any outside research. Have a good lunch,
21 and we'll start back at 1:00. Have a good one.

22 (The jury exits the courtroom, 11:59 a.m.)

23 THE COURT: Anything further from the government?

24 MS. RATTAN: No, your Honor.

25 THE COURT: Defense?

1 MR. WHALEN: No, your Honor.

2 THE COURT: Okay. See you back at 1:00.

3 (Recess, 12:00 p.m. to 1:02 p.m.)

4 (Open court, defendant present, jury present.)

5 THE COURT: Please be seated.

6 Your next witness?

7 MS. RATTAN: Your Honor, the United States would
8 recall Denny Willmon.

9 MR. WHALEN: Your Honor, can we approach, please?

10 THE COURT: Yes.

11 (Sidebar conference, off the record.)

12 MS. RATTAN: May I proceed, your Honor?

13 THE COURT: Yes.

14 MR. WHALEN: And, your Honor, just for the record,
15 we're going to object to the recall of this witness.

16 THE COURT: Okay. Overruled.

17 DIRECT EXAMINATION OF DENNY MAURICE WILLMON

18 RECALLED ON BEHALF OF THE GOVERNMENT

19 BY MS. RATTAN:

20 Q. Please state your name.

21 A. Denny Willmon.

22 Q. Okay. Mr. Willmon, you testified this morning; is that
23 right?

24 A. Yes.

25 Q. This morning you were asked about whether you received

1 any documents or paperwork from Keith Ashley; is that
2 right?

3 A. Yes.

4 Q. Did he give you any paperwork that looked like you had
5 a real SmartTrust UIT?

6 A. Yes.

7 Q. He did.

8 And did you call or look up online the company
9 SmartTrust UIT?

10 A. Yes.

11 Q. Were you able to call them?

12 A. I actually got connected but --

13 Q. Okay. And did you ask them, "Do I have an account with
14 SmartTrust UIT?"

15 A. I wasn't able to determine an account at all.

16 Q. So you asked them if you had an account, and what did
17 they say?

18 MR. WHALEN: Objection as to hearsay, your Honor.

19 THE COURT: Sustained.

20 BY MS. RATTAN:

21 Q. After you got off the phone, Mr. Willmon, with
22 SmartTrust UIT, did you believe that you had an account
23 there?

24 MR. WHALEN: Objection, your Honor. It calls for
25 hearsay. It's based on hearsay.

1 THE COURT: Well, overruled.

2 A. The answer is -- I believe, based on the way you worded
3 the question it would be, yes, I understood I didn't have
4 an account.

5 MS. RATTAN: Thank you, your Honor.

6 THE COURT: Any questions?

7 CROSS-EXAMINATION OF DENNY MAURICE WILLMON

8 BY MR. WHALEN:

9 Q. Mr. Willmon, just so I'm clear, I think previously you
10 were asked whether or not -- let me ask you this: What you
11 just testified to you didn't testify to on direct
12 examination, did you?

13 MS. RATTAN: Your Honor, I think that's confusing.

14 THE COURT: Overruled.

15 A. Direct examination?

16 BY MR. WHALEN:

17 Q. When the government lawyer called you the first time,
18 you didn't mention anything about making a phone call or
19 anything like that, did you?

20 A. No.

21 MR. WHALEN: I'll pass the witness.

22 THE COURT: Okay. You may step down, sir. Thank
23 you.

24 Okay. What's next?

25 MR. FINE: Your Honor, we'll call Robert Greening,

1 your Honor.

2 THE COURT: Turn your mic on.

3 MR. FINE: United States will call Robert
4 Greening, your Honor.

5 MR. SANDEL: And, Judge, just for clarity of the
6 record, we would object to this witness based on the
7 grounds we discussed in pretrial this morning and ask for a
8 running objection to all questions.

9 THE COURT: Well, that's not the way that works.
10 I will overrule your objection. And when they ask an
11 objectionable question, then you can certainly object and
12 then ask later in that continuing line of questioning.

13 MR. SANDEL: Understood.

14 THE COURT: Sir, if you'll raise your right hand
15 and be sworn in.

16 (The oath is administered to the witness.)

17 THE COURT: Go ahead and proceed.

18 MR. FINE: Thank you, your Honor.

19 DIRECT EXAMINATION OF ROBERT GREENING

20 CALLED ON BEHALF OF THE GOVERNMENT

21 BY MR. FINE:

22 Q. Good afternoon, Mr. Greening. How are you, sir?

23 A. I'm fine. How are you?

24 Q. Will you please introduce yourself to the ladies and
25 gentlemen of the jury and spell your last name for the

1 court reporter.

2 A. My name is Robert Greening, Green with I-N-G on the
3 end, G-R-E-E-N-I-N-G.

4 Q. And, Mr. Greening, how are you employed?

5 A. I'm self-employed.

6 Q. And what kind of work do you do?

7 A. I'm a lawyer.

8 Q. And what type of law do you practice?

9 A. I do personal injury and death cases on the plaintiff
10 side of the docket.

11 Q. And how long have you been a licensed attorney in the
12 state of Texas?

13 A. About -- I think it's -- I was licensed in 1990. So
14 was that 32 years, I guess?

15 Q. Close enough on my math, yeah.

16 A. Long time.

17 Q. And did you grow up here in the Dallas-Fort Worth area?

18 A. I grew up in Dallas, yes.

19 Q. All right. And have family here in the area?

20 A. I actually have a sister that lives down the road in
21 Van Alstyne.

22 Q. All right. And are you married?

23 A. I am.

24 Q. And how long have you been married for?

25 A. Thirty-four -- 35 years.

1 Q. And children as well?

2 A. Yes.

3 Q. And how old are your children?

4 A. I have a 22-year-old son who is a senior in college,
5 and I have a 19-year-old daughter who is a freshman in
6 college. So we're new empty-nesters.

7 Q. And, Mr. Greening, you know why you're here today,
8 correct?

9 A. Yes.

10 Q. And fair to say you're not used to being on that side
11 of the witness stand; is that fair?

12 A. That's a fair statement.

13 Q. So I want to start with this. Do you know a man named
14 Keith Ashley?

15 A. I do.

16 MR. SANDEL: Your Honor, at this time we'd object
17 based on the grounds previously argued.

18 THE COURT: Overruled.

19 BY MR. FINE:

20 Q. And how did you first know Keith Ashley?

21 A. I think I first met him somehow -- I don't remember
22 how, but he acted as an expert witness in a case that I
23 had.

24 Q. And when you say "an expert witness in a case," you
25 were the lawyer on it; is that correct?

1 A. Yes.

2 Q. And what sort of expertise did he provide in that case?

3 Just sort of the general area.

4 A. It was a case that actually went to trial, and I
5 believe it was -- I mean, I don't know how much you want to
6 know about it; but it was a -- it was a paramedic/EMT
7 malpractice case against -- I believe it was the City of
8 Dallas, I think.

9 And it went to trial in Dallas County, and he --
10 whenever you have a case like that, a health care liability
11 claim, you have to have an expert witness to provide
12 testimony about whether or not the standard of care was met
13 or not met; and he was our expert in that case for the
14 paramedic or EMT care.

15 Q. Okay. And do you see Keith Ashley in the courtroom
16 today?

17 A. Yes.

18 Q. And if this is Chair 1, 2, 3, and 4, which chair is
19 Mr. Ashley sitting in?

20 A. Four.

21 MR. FINE: Your Honor, let the record reflect the
22 witness has identified the defendant in open court.

23 THE COURT: The record will so reflect.

24 BY MR. FINE:

25 Q. And so, Mr. Greening, he was an expert witness for you.

1 Did y'all remain friendly after that or -- or not?

2 A. I really can't -- I mean, yes, we remained friendly.

3 We lost touch and then we got back in touch, but I don't
4 remember when or any of that but -- I guess the short
5 answer is yes.

6 Q. Okay. And you said he was an expert witness for you
7 sometime in the '90s. When did you sort of get back in
8 touch with him?

9 A. I really don't remember. The only thing that comes to
10 my mind is we'd sort of lost touch, and I seem to remember
11 seeing him at the hospital when my father -- I believe my
12 father was in the hospital in the early 2000s.

13 And he was getting on the elevator as I was
14 getting on the elevator and his wife was on, I think, the
15 same floor as my dad or something like that and we -- I
16 hadn't seen him in a long time. That's just something
17 coming to my mind that makes me think that's when we
18 probably got back in touch.

19 Q. And is that somewhere around 2003? Is that accurate?

20 A. I would think so, something like that, because my
21 father passed away in 2003 and --

22 Q. And so --

23 A. Or it was maybe late 2002.

24 Q. Okay. So around 20 years ago?

25 A. Yeah.

1 Q. Now, you said you knew Keith Ashley, the defendant, as
2 an expert witness. Did there come a time where you knew
3 him more of as a financial advisor?

4 A. Yes.

5 Q. And explain to the jury how that -- how it went from an
6 expert paramedic to a financial advisor. How did that
7 work?

8 A. To be honest with you, I don't remember. I just don't
9 remember. I just remember that he was -- had taken the
10 test or something and had become -- he was doing the
11 paramedic work but also being a financial advisor, and we
12 just -- he told me about that.

13 But I don't remember anything more than that. I'm
14 sorry.

15 Q. And did y'all have conversations about your personal
16 finances?

17 A. Yes.

18 Q. And did he try to get you to invest money with him?

19 A. Yes.

20 Q. And did you invest money with him?

21 A. Yes.

22 Q. Do you remember around what year you started investing
23 money with the defendant?

24 A. I don't. I'm sorry.

25 Q. Do you remember what sort of money we're talking about

1 initially? Are we talking about a couple hundred? A few
2 thousand? Tens of thousands?

3 A. You mean at first?

4 Q. Yes.

5 A. I really -- I don't remember. I know that he -- he got
6 my firm going with a -- you know, a 401(k) or a simple
7 plan. He helped our firm get that done, and we started
8 investing in that.

9 And I know I bought some other products from him,
10 you know, financial products; but I don't remember the
11 amounts at first or anything like that. I'm sorry. I just
12 don't.

13 Q. No, that's fine.

14 And did you trust him at the time?

15 A. Yes.

16 Q. Did he seem like he knew what he was talking about?

17 A. Yes.

18 Q. Are you an expert in the area of financial planning or
19 investments, anything along those lines?

20 A. No, and I don't like anything -- I just don't -- it's
21 nothing that really interests me.

22 Q. So, you know, there's some people who are kind of
23 amateur investors that dabble in the market, things like
24 that. Is it fair to say you didn't really want to have
25 anything to do with that and that's where you allowed the

1 defendant to sort of manage your money?

2 A. Yes.

3 Q. When he would talk to you about different products, did
4 he make -- did he make any sort of promises to you about
5 returns on those investments?

6 A. At times, yes.

7 Q. Okay. And I want to talk about specifically something
8 called a UIT. Are you familiar with that?

9 A. I mean, I'm familiar with the term; but that's about as
10 far as it goes.

11 Q. And that's -- that was going to be my next point. The
12 term -- you know the UIT. You don't know the ins and outs
13 of it. Is that fair to say?

14 A. That's fair to say, yes.

15 Q. Did the defendant try to explain to you how a UIT
16 works?

17 A. Yes.

18 Q. Did you understand how it worked, from the defendant?

19 A. Not really; but, I mean, I trusted Keith to tell me
20 what it was and -- I mean, I just trusted him to tell me.

21 Q. Had you invested money with him before he talked about
22 the UIT?

23 A. Yes.

24 Q. Had you bought products from him before he talked about
25 the UIT?

1 A. Yes.

2 Q. And up until that point, were you happy with your
3 investments with him?

4 A. Yes.

5 Q. Did you see returns on those investments?

6 A. Yes.

7 Q. And so initially when he talked to you about the UIT,
8 did you agree to purchase the UIT?

9 A. Not at first. I mean, I think he talked about it -- he
10 talked about it for a while every once in a while when we
11 would meet up to talk about my other investments. And I
12 didn't do it at first, but then I did it later.

13 Q. And let's talk about the early conversations about the
14 UIT. What kind of financial investment was he talking
15 about moneywise?

16 A. At first?

17 Q. Yeah.

18 A. He never really gave me a specific number.

19 Q. Did there become a time where he did give you a
20 specific number?

21 A. Not really. I mean, it was more just sort of "whatever
22 you want to do" kind of thing. You know, he told me
23 what -- he told me what I would receive, like what kind of
24 interest rate or whatever I would get and that kind of
25 thing; but it was never, like, a specific number. It was

1 kind of left to me.

2 Q. Do you remember what the interest rate was that he
3 promised you on that?

4 A. I don't. I really don't.

5 Q. Did he --

6 A. I mean, it was a guaranteed rate of return; but I
7 don't -- I just don't remember. I'm sorry.

8 Q. That's -- you don't need to apologize.

9 Were the payments for those returns supposed to be
10 set up monthly?

11 A. Yes.

12 Q. And eventually did you agree to purchase a UIT with the
13 defendant?

14 A. Yes.

15 Q. What was the amount of money that you gave him?

16 A. \$75,000.

17 Q. And during the course of these communications, even
18 leading up to the point where you bought the UIT, did you
19 guys have conversations over the phone about the UIT?

20 A. I believe so. I mean, probably we did. Probably we
21 did. It may have been in person, may have been both. I
22 just -- I don't recall exactly.

23 Q. What about text messages about the UIT? Do you
24 remember --

25 A. Probably.

1 Q. Okay. After you purchased the UIT, did you actually
2 have a conversation with him over text?

3 A. Yes -- or when I decided to do it, yes.

4 Q. Okay. If you'll take a look at the binder in front of
5 you --

6 A. Okay.

7 Q. -- Government's Exhibit 48.

8 A. Yes.

9 Q. And have you reviewed that before?

10 Are those text messages between you and the
11 defendant?

12 A. Yes.

13 MR. FINE: Your Honor, at this time we'd offer
14 Government's 48.

15 MR. SANDEL: No objection, your Honor.

16 THE COURT: 48 will be admitted.

17 MR. FINE: Permission to publish, your Honor?

18 THE COURT: Yes, you may.

19 BY MR. FINE:

20 Q. All right, Mr. Greening. We're going to go through the
21 texts real quick on Exhibit 48, Government's Exhibit 48.

22 The gray is the defendant, Keith Ashley, correct?

23 A. Yes.

24 Q. And green is you; is that correct?

25 A. That's correct.

1 Q. Okay. So you be you and I'll be the defendant and
2 we'll just go through this. And there might be times where
3 we stop and kind of -- I want to get your thoughts on
4 what's going on in the text conversation.

5 A. Okay.

6 Q. So before we start this, explain to the jury. Why was
7 this conversation happening?

8 A. Okay. This was more than two years ago; but my best
9 recollection when I look at this is that when Keith sent me
10 the wiring instructions for me to wire the money, the
11 \$75,000 for the UIT, the wiring instructions didn't make
12 sense to me based upon what he had told me about where the
13 money was going to go.

14 So this is me questioning him because I was -- not
15 that I didn't trust him but that I -- it just wasn't what
16 he said and I didn't want \$75,000 getting wired to
17 someplace that was wrong.

18 You see what I mean?

19 Q. Of course.

20 And 75,000, that's a lot of money, correct?

21 A. It's a lot of money to me.

22 Q. Sure.

23 And had you actually received an inheritance from
24 your mother?

25 A. Yeah. I mean, part of that money was, you know -- in

1 my mind I sort of have where money came from; and part of
2 that money was from the money I got when my mom and dad
3 passed away, yeah.

4 Q. And before you invested it in the UIT, where was that
5 money invested, if anywhere?

6 A. Nowhere.

7 Q. So it was essentially in a checking account or savings
8 account?

9 A. It was in a savings account. It was just -- I never
10 really felt like it was my money, so I just kind of let it
11 sit there.

12 Q. And was that part of the sell that the defendant gave
13 you of, hey, it's just sitting in this account not making
14 any interest. Why don't you put it in this UIT and make a
15 little money?

16 A. Yeah, because it was guaranteed.

17 Q. Right.

18 Okay. So you will read the gray part as the
19 defendant.

20 "Sent you wire info. I let Parkland now" -- I
21 think know -- "it will be coming today or tomorrow?"

22 And then your part?

23 A. "Ok.

24 "So it goes to Parkland or Branch Banking and
25 Trust Co."

1 Q. "Branch Banking Trust.

2 "Every transaction we do is monitored and approved
3 through Parkland. They are our broker dealer. Call me and
4 I will explain.

5 "You will have sub accounts inside Parkland and
6 this UIT is one of them.

7 "Also, call me on your new guys potential deal. I
8 have a better idea."

9 A. "Ok. Call me I'm done."

10 Q. And do you remember if he called you at that point?

11 A. I don't remember. I just don't.

12 Q. All right. So then the next day, on February 6th,
13 2020, at 9:20 a.m.: "Just got another approach I can pass
14 along to you.

15 "Please try and get wire done today," underlined,
16 "I do not want to have to redo paperwork. Thank you."

17 A. "Ok.

18 "75k right?"

19 Q. And so looking at the 10:52 a.m. text, when he says, "I
20 do not want to have to redo paperwork," underlines "today,"
21 what was going through your mind when you're reading that
22 text?

23 A. Nothing, because that's typical of me being busy and
24 not getting stuff done, like this -- my own personal stuff
25 done; and that's typical of Keith saying, come on, let's

1 get it done, you know. I didn't think anything really
2 about that.

3 Q. Looking back on it, knowing what you know now, how does
4 it look to you?

5 A. It -- well, looking back on it, knowing what I know
6 now, it makes me feel pressured, like he was trying to
7 pressure me.

8 Q. I mean, it's fair to say he's underlining "today." I
9 don't want to have to redo the paperwork. It's give me
10 that 75,000 now, now, now, now.

11 Is that how it looks?

12 A. Yes.

13 Q. And, again, 75,000 is a lot of money, correct?

14 A. Yes.

15 Q. All right. So then he says, "Yes."

16 A. And then I said, "Keith" -- because I guess I was at
17 the bank or something when this was happening, when we were
18 trying to get the wire done.

19 Anyway, I said, "Keith: KBKK's address
20 autopopulated as your home address. Is this correct?"

21 Q. And so KBKK -- you didn't think that that should have
22 his home address as the address for KBKK. Is that fair to
23 say? Something didn't make sense to you?

24 A. Yeah. That didn't make sense to me.

25 Q. And why didn't that make sense to you?

1 A. Because I thought I was -- I thought it was going to
2 Parkland.

3 Q. Okay. Explain to the jury. What is your understanding
4 of who Parkland or what that institution is.

5 A. My understanding was Parkland was where Keith had his
6 license or that was his broker. That's really all I knew.

7 Q. And so as we look at his response at 11:46 -- "It is
8 attached to Parkland so yes and no.

9 "I am a registered rep everything I do is attached
10 to Parkland so yes it will.

11 "Everything I do has to be approved by Parkland
12 Securities."

13 So is it fair to say there it's kind of some
14 hedging back and forth, yes and no, I'm with Parkland, I'm
15 not, it's got my home address? I mean, does that seem a
16 little confusing to you?

17 A. I mean, looking at it now, it does. Then, I just took
18 whatever he told me at face value and --

19 Q. Well, because you trusted --

20 A. My big concern was what I said next, which was: "I
21 just wanted to make sure that wasn't a mistake," because my
22 biggest concern was I did not want this money going
23 someplace it wasn't supposed to go and I'm just
24 double-checking with him about that.

25 Q. And so after you said, "I just wanted to make sure that

1 wasn't a mistake," what did you say next?

2 A. "So after this UIT is purchased will I get a statement
3 or shares or anything?"

4 Q. And why did you want -- why did you want that? Why did
5 you want a statement?

6 A. So I could keep up with what I was buying and so I
7 could -- everything else I've ever bought from him, I
8 always got a statement. I would get a statement telling me
9 how much money it earned over the last quarter or what have
10 you, and I was just making sure I was going to get the same
11 thing for this because it was a little bit different kind
12 of investment and I just wanted to make sure I was going to
13 get -- at least the way he described it, it wasn't like an
14 annuity I was purchasing or something like that. I was
15 actually purchasing -- I thought I was purchasing shares in
16 something.

17 So I was like, well, okay, am I going to get
18 something, a document or something showing shares or
19 something like that?

20 Q. Did you ever receive any documentation?

21 A. No.

22 Q. Did that concern you?

23 A. I really forgot about it, to be honest with you,
24 because I was getting the amount of money that he said I
25 would get every month in my account. And so I thought, oh,

1 well, maybe the paperwork -- he just hasn't gotten me the
2 paperwork yet.

3 I mean, I totally trusted him; so it just didn't
4 really concern me because I thought, well, the money's
5 being deposited and Keith probably just hasn't gotten
6 around to getting me the paperwork yet.

7 Q. And so he responded after you asked for a statement:
8 "All registered reps have to have a licensed address of
9 record through FINRA.

10 "Yes it will be on your Parkland statement."

11 And how did you respond?

12 A. It looks like maybe he tried to call me because I said,
13 "Sorry can't pick up. All good, it's been sent."

14 Q. And when you say "it's been sent," at that point did
15 you wire \$75,000 to that account?

16 A. Yes.

17 Q. And we'll get to that in a moment.

18 The response is: "Just like all your other
19 statements but in a brokerage account we can hold
20 UIT/Stocks/LP/Ex."

21 And your response?

22 A. "Ok no prob. Also that other 75k will it have a
23 separate account so I can track it or is it going to be
24 dumped into an existing account."

25 Q. And then he responds with: "It will be in Parkland as

1 well so you will be able to track it as well."

2 A. And I said, "Awesome thanks Keith."

3 Q. "You should receive Parkland statement in the next few
4 weeks via email.

5 "How much do you want from Williams 529 account?"

6 A. "Not sure yet."

7 Q. "Ok. Also have paperwork I need your original
8 signature on I should have got the other day you in office
9 tomorrow. It is updated client data sheet and UIT
10 disclosures."

11 And then you say?

12 A. I said, "I am out of town tomorrow."

13 Q. "Ok next week what days.

14 "What day can I swing by and get your signature to
15 get all your account stuff finalized?"

16 A. "I am around all afternoon today."

17 (As read): "Or Wednesday."

18 Q. "Wednesday is better. What time?"

19 A. And then it just says, "Anytime" -- I think that's
20 "but," but I'm not sure.

21 Q. And then that's the end of that text exchange, which is
22 over the course of a couple of days, correct?

23 A. Yes.

24 Q. So at this point you have wired \$75,000 into what you
25 believed was a UIT, correct?

1 A. Yes.

2 Q. That's what the defendant told you, correct?

3 A. Yes.

4 Q. Did he ever say that any of that money was going to go
5 to casinos?

6 A. No.

7 Q. Did he ever say that money was going to go to his
8 personal bank account?

9 A. No.

10 Q. Did he ever say that was going to go to his credit
11 debts?

12 A. No.

13 Q. Did he ever say it was going to go to his mortgage?

14 A. No.

15 Q. Tell this jury exactly where he said that money was
16 going to go, \$75,000.

17 A. To the unit investment trust.

18 Q. And he promised you a return on that investment,
19 correct?

20 A. Yes.

21 Q. And he actually delivered, for a few months, a return
22 on that investment, correct?

23 A. Yes.

24 Q. All right.

25 MR. FINE: Permission to publish State's (sic) 49,

1 your Honor. It's already been --

2 THE COURT: Yes, go ahead.

3 MR. FINE: Government's 49.

4 A. Do you want me to go to that?

5 BY MR. FINE:

6 Q. You can actually -- if you look, there should be a
7 screen -- you can see that.

8 A. Yes.

9 Q. Really all I wanted to point out here, Mr. Greening, is
10 this the wire transfer that was completed back on
11 February 6th, 2020, that we talked about in those text
12 messages?

13 A. Yes.

14 Q. And -- well, I just circled right over your name.
15 That's not going to help.

16 Is that your name there, "Robert Greening"?

17 A. Yes.

18 Q. Is that the amount, \$75,000?

19 A. Yes.

20 Q. And did it get sent to KBKK, LLC?

21 A. Yes.

22 Q. What was your understanding of what KBKK, LLC, was?

23 A. Whatever was in that text message he told me.

24 Q. Okay. I mean, is it fair to say that you felt that
25 this is a legitimate investment into a financial

1 institution?

2 A. Yes.

3 Q. Not into the defendant's own pocket, correct?

4 A. That's correct.

5 Q. Not to pay off any of his debts, correct?

6 A. Correct.

7 Q. Now, moving ahead a little bit to September 20th of
8 2020, did you actually loan the defendant another \$75,000?

9 A. I mean, I -- I don't know if it was a -- I guess it was
10 a loan. It was to his brewery. It wasn't to him; it was
11 to his brewery for an investment in the hand sanitizer
12 business he was doing.

13 Q. Okay. Explain to the jury about that, the brewery,
14 hand sanitizer. We're September -- September 20 of 2020,
15 we're in the middle of the pandemic. Explain to them what
16 you mean by the hand sanitizer.

17 A. Keith had a brewery and he told me he was transitioning
18 the brewery, or some of it, over to -- because, you know,
19 the beer business was not that great at that point because
20 nobody was going out because it was the pandemic.

21 So he said that he was converting -- it so happens
22 that the beer business, the way you make beer, you can make
23 hand sanitizer, too.

24 And so he was converting it all over to do that
25 and they had orders coming in for hand sanitizer hand over

1 fist and he needed capital to keep up with the orders, to
2 buy the bottles and all the raw materials and everything
3 that he needed to keep up with orders.

4 And, you know, he didn't want to go to a bank.

5 He'd rather just have friends invest and he had friends
6 investing so, you know, he gave me the opportunity, so to
7 speak, to invest in that and that's what I did.

8 Q. And did you make that investment?

9 A. I did.

10 Q. And what was the amount of that investment?

11 A. \$75,000.

12 Q. And what was the arrangement in terms of how you were
13 to be paid back or was there going to be interest on it?

14 A. It was a promissory note. And I haven't reviewed that
15 promissory note in a long time, so I don't remember the
16 terms of it. But it was a promissory note that, you know,
17 we exchanged for that.

18 Q. And did you feel like you were kind of just helping out
19 a friend there, in a way?

20 A. I did. But, I mean, the terms were good on it. But I
21 did feel I was helping him, and I felt like he was a really
22 good businessman and so why not do it.

23 Q. Did he tell you why he chose to not go to a bank for
24 that -- for that loan or that amount of money?

25 A. I -- he may have, but I don't remember what he said if

1 he did.

2 Q. But he told you that he was not going to a bank for
3 that money? That's what he told me?

4 A. That was my -- that's my recollection. That's my best
5 recollection.

6 Q. So that \$75,000, that was clearly going to the brewery
7 for the hand sanitizer business, correct?

8 A. Yes.

9 Q. Versus the other \$75,000 which was clearly going to a
10 UIT, correct?

11 A. Yes.

12 Q. All right. Two separate transactions there?

13 A. Yes.

14 Q. Two separate investments.

15 All right. Now --

16 A. Yes.

17 Q. -- sometime after September of 2020, probably towards
18 the end of October 2020, did the Carrollton Police
19 Department contact you?

20 A. Yes.

21 Q. And tell the jury what that was in regards to.

22 A. A detective from Carrollton Police called me and
23 started asking me questions about --

24 MR. SANDEL: Objection to the hearsay, your Honor.

25 THE COURT: Sustained.

1 BY MR. FINE:

2 Q. Without getting into what was said, at the conclusion
3 of that conversation, did you have concerns about the
4 defendant?

5 A. Yes.

6 Q. Did you have concerns about your money?

7 A. Yes.

8 Q. And so did you end up having a Zoom call with the
9 defendant?

10 A. Yes.

11 Q. And did that Zoom call take place on October 30th,
12 2020?

13 A. Yes.

14 Q. And was that, give or take, maybe about a week after
15 the conversation with Carrollton PD?

16 A. It was after it. I don't remember when, how much after
17 it. But it was after I had received a call from Carrollton
18 Police.

19 Q. And so this is February 6, \$75,000 into the UIT.
20 September 20th, another 75,000 for the hand sanitizer. You
21 have this phone call with Carrollton PD and then this Zoom
22 call, correct?

23 A. Zoom call with Keith, yes.

24 Q. Zoom call with Keith.

25 And we've reviewed that call, correct?

1 A. Yes.

2 Q. And within Government's Exhibit 50 is a recording of
3 that call that we reviewed, correct?

4 A. Yes.

5 MR. FINE: We would offer Government's Exhibit 50
6 at this time, which is the Zoom call.

7 MR. SANDEL: Your Honor, at this time we'd renew
8 our previously stated objection.

9 THE COURT: Okay. Overruled. 50 will be
10 admitted.

11 MR. FINE: And we would also offer
12 Government's 51, which is a transcript of that same call.

13 MR. SANDEL: Same objection, your Honor.

14 THE COURT: Okay. Overruled. 51 will be
15 admitted.

16 MR. FINE: Permission to publish Government's 50,
17 your Honor?

18 THE COURT: Yes, go ahead.

19 (Audiovisual presentation to the jury.)

20 BY MR. FINE:

21 Q. All right. So, Mr. Greening, some follow-up on that
22 conversation. You mentioned to the jury before that going
23 into that conversation, you had some concerns about your
24 money and the defendant; is that correct?

25 A. Yes.

1 Q. And so were those concerns alleviated by that
2 conversation, or did they become greater after that
3 conversation?

4 A. They became greater.

5 Q. And I want to point out a few things, the difference
6 between text messages and the Zoom call.

7 MR. FINE: So permission to publish Government's
8 Exhibit 48 again, your Honor?

9 THE COURT: Yes, go ahead.

10 MR. FINE: So if we could go down just a little
11 bit to the 2:54 text.

12 BY MR. FINE:

13 Q. So in this conversation -- this is February 6th of
14 2020. The defendant says, "You will have subaccounts
15 inside Parkland and this UIT is one of them," correct?

16 A. Yes.

17 Q. And so it's clear you're talking about a UIT here in
18 terms of the investment product, correct?

19 A. Yes.

20 Q. On the Zoom call when you talked to him about the UIT,
21 he sort of acts like he doesn't even know what the UIT is.
22 Is that fair to say?

23 A. Well, all of a sudden he said, "No, you didn't do that.
24 You did an alternative investment." And I -- so -- he
25 called it something different.

1 Q. Right. And this is -- I mean, it's pretty clear. In
2 this text message right here he mentioned UIT and it's
3 going to be inside of the Parkland account, correct?

4 A. Yes.

5 Q. And now on October 30th it's, well, this is an
6 alternative investment. It's not really a UIT.

7 He's kind of flimflamming, right?

8 A. Yes.

9 MR. FINE: And if we could scroll down.

10 Keep going.

11 Keep going to page 3 on there at 11:46 a.m.

12 BY MR. FINE:

13 Q. So this text -- when you asked him about the
14 autopopulated home address on there, he says, "It is
15 attached to Parkland," right?

16 A. Yes.

17 Q. And then in the Zoom call he specifically says, "Oh,
18 no, this isn't linked to Parkland at all," right?

19 A. Right.

20 Q. So, again, what are your thoughts on that? He's saying
21 Parkland here; and then all of a sudden you've got these
22 concerns and he goes, oh, you know, this isn't anything to
23 do with Parkland.

24 What are your thoughts on that?

25 A. Well, I'd already received a call from Carrollton

1 Police when he told me on Zoom, no, that wasn't a UIT; that
2 was an alternative -- or an alternate investment.

3 And I'm sitting there thinking, no. This is the
4 first time you've ever said it was an alternate investment.
5 I don't even know what that is. But I didn't want to
6 necessarily confront him on the Zoom call.

7 It was just different, I guess, than what he had
8 said it was. Put it that way.

9 Q. There is a clear difference between the text messages
10 when he's trying to get you to invest and when you've
11 already invested and you're sort of calling him on it a
12 little bit, for lack of a better word; is that right?

13 A. Yes.

14 Q. All right.

15 MR. FINE: And if we could scroll down to
16 11:53 a.m.

17 BY MR. FINE:

18 Q. It's pretty clear the defendant says, "It will be on
19 your Parkland statement," correct?

20 A. Yes.

21 Q. And when you asked him about that -- because you say,
22 "Hey, it's been, you know, eight months. I still don't
23 have this statement."

24 He says, "Oh, well, you'll get it on your annual
25 once-a-year statement."

1 That was his response, right?

2 A. Yes.

3 Q. And did you ever receive anything on your statement
4 about the UIT?

5 A. No.

6 Q. Or about this alternative investment that suddenly the
7 semantics have changed? Anything about that?

8 A. No.

9 Q. All right.

10 A. I never got anything.

11 Q. After the Zoom call -- at that point you had a total of
12 a hundred and -- well, you had more but at least \$150,000
13 invested in the hands of Keith Ashley, correct?

14 A. Yes.

15 Q. Did you actually have more than the 150,000?

16 A. Yes.

17 Q. About how much more did you have?

18 A. I don't know. I don't know because I -- I mean, it's
19 not that I'm a wealthy person. It's just I've tried to
20 forget all of this right now, so I don't know the amount
21 exactly. I had some annuities invested with him, some life
22 insurance, whole life policies, my 401(k) --

23 Q. And let me ask you this: The money that you had with
24 him, what was that going to be earmarked for? Was that for
25 your retirement? For your kids down the line? For things

1 like that?

2 A. Which money?

3 Q. All the money you had with him.

4 A. Yes.

5 Q. I mean, was that going to help fund college for your
6 kids?

7 A. Potentially.

8 Q. Was that going to help if there was wedding expenses
9 down the line?

10 A. Yes.

11 Q. Was that going to help your retirement?

12 A. Yes.

13 Q. Was that there in case, god forbid, anything happened
14 to you or your family's health in the future?

15 A. Yes.

16 Q. I mean, that was your nest egg, correct?

17 A. Yes.

18 Q. You had worked 30-plus years saving that money up,
19 correct?

20 A. Well, some of it; and then some of it I inherited.

21 Q. Sure.

22 Did you ever get any of the money back?

23 A. Yes.

24 Q. How much money did you get back?

25 A. I asked at some point -- after this Zoom call, I was

1 very uncomfortable; and I asked Keith to just give me back
2 the 75,000 for the UIT investment since he was calling it
3 something different.

4 And I didn't say all that to him. I just said,
5 "I'd really like to have that money back. I'm not
6 comfortable anymore with this and that was money that I got
7 from my parents and I don't -- I'm just not comfortable
8 with it." And he gave it back to me.

9 Q. Do you know where that \$75,000 came from?

10 A. I mean, the way I looked at it, it was my money. He
11 gave it back to me. But I don't know where he -- I don't
12 know where it came from.

13 Q. You received -- you put in 150,000. You got \$75,000
14 back in your pocket, correct?

15 A. Yes.

16 Q. You don't know if that was \$75,000 from other investors
17 or anywhere. You just know you got 75. But you're still
18 out the other 75, correct?

19 A. I am.

20 Q. Is that the total loss that you received from the
21 defendant, or was it more than that financially?

22 A. Well, as far as I know, that's the total loss.

23 Q. And when you say as far as you know, is it fair to
24 say -- you know, we talked about it. You put your trust
25 into this man to handle your nest egg. Outside of you

1 going and forensically accounting for every bit of money,
2 is it hard for you to know exactly how much money he stole
3 from you?

4 A. Well, I mean, immediately upon getting the phone call
5 from Carrollton Police, I called every place where I had
6 accounts through Keith and made sure that the money was
7 there, right?

8 So -- I think what I meant was that I don't know
9 what -- I don't really know how much money I maybe lost in
10 investments and things like that because I bought annuities
11 and maybe that wasn't the right thing to do. I don't know.
12 Maybe it made -- you know, I just don't know.

13 But as far as I know for sure, I have not -- I
14 invested that \$75,000 in the hand sanitizer with the
15 promissory note; and I haven't -- I don't have that money.

16 Q. Okay. Did you want to be down here today testifying
17 about this?

18 A. Absolutely not.

19 Q. How does it make you feel to have to come down here and
20 testify?

21 A. How does it make me feel?

22 Q. Yeah.

23 A. Embarrassed and -- I've moved on from this, and so this
24 is something I just -- you know, it's over with for me. I
25 mean, it's -- it's uncomfortable. Put it that way. I

1 just -- I don't like being here.

2 Q. And being in your shoes and knowing the defendant for
3 25 to 30 years, is it easy to see how he is able to swindle
4 people?

5 MR. SANDEL: Objection, speculation, your Honor.

6 THE COURT: Overruled.

7 You can answer.

8 A. You know, I can only speak for myself, okay? I can't
9 speak for other people. But it's just a sense of betrayal
10 because I thought that we were friends first and -- yes --
11 I think the question was am I surprised by how he could
12 deceive me.

13 And the answer to that is yes, because it's a real
14 sense of betrayal but -- I don't know if I'm answering your
15 question, but it's -- I don't -- I don't enjoy being here.
16 Put it that way.

17 BY MR. FINE:

18 Q. All right. Thank you, Mr. Greening.

19 MR. FINE: I'll pass the witness, your Honor.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION OF ROBERT GREENING

22 BY MR. SANDEL:

23 Q. Good afternoon, Mr. Greening. How are you?

24 A. I'm good. How are you?

25 Q. My name is Ryne Sandel; and you and I have not had the

1 opportunity to meet yet, have we?

2 A. No, we haven't.

3 Q. Okay.

4 A. Let me just get some water real quick.

5 Q. Please. Take your time.

6 A. Okay. Go ahead. Sorry.

7 Q. I've just got a few follow-up questions based on some
8 of the information from your direct examination. But if I
9 ask you a question and you need me to rephrase it, just let
10 me know and I'm happy to do that, okay?

11 A. Okay.

12 Q. On direct examination when Mr. Fine was asking you
13 about your experience with financial deals, I think what
14 you said is that's certainly not an expertise of yours,
15 correct?

16 A. Correct.

17 Q. And I think what I remember you saying is it's not even
18 really something that interests you a great deal.

19 A. Not really.

20 Q. Okay. So when you were discussing these different
21 investments with Mr. Ashley, fair to say that you may have
22 had a basic understanding of what these investments were
23 but you didn't know the ins and outs and the nuances of how
24 they work, correct?

25 A. No, I didn't know the nuances. No.

1 Q. Now, we talked about that \$75,000 transaction --
2 because -- we'll say the first \$75,000, okay? So when I
3 say "the first \$75,000," do you know which one I'm
4 referring to?

5 A. The UIT?

6 Q. Correct, yeah, the one that you were referring to with
7 Mr. Fine as the UIT or the alternative investment, that
8 75,000.

9 When you were discussing that with Mr. Fine, you
10 said that at some point you had reached out to Mr. Ashley
11 and said, "Hey, I'm uncomfortable and I'd like that money
12 back."

13 Do you recall that?

14 A. Would you ask me that one more time? I'm sorry.

15 Q. Sure.

16 Regarding that first \$75,000 investment, at some
17 point on direct examination you discussed with Mr. Fine you
18 reached out to Mr. Ashley and you said, "Hey, I'm
19 uncomfortable. I'd like that \$75,000 back," correct?

20 A. Yes.

21 Q. And when you reached out to him about getting that
22 money back, how did you reach out to him?

23 A. I don't remember.

24 Q. Would it have been an email maybe?

25 A. I truly do not remember.

1 Q. If I were to hand you an email, might that refresh your
2 recollection?

3 A. Yes.

4 MR. SANDEL: May I approach, your Honor?

5 THE COURT: Yes.

6 A. Do you want me to read --

7 BY MR. SANDEL:

8 Q. No, I don't want you to read aloud. I just want you to
9 review it and see if that refreshes your recollection.

10 A. Okay.

11 Okay.

12 Q. Having reviewed that, did your recollection get a bit
13 refreshed on --

14 A. Yes.

15 Q. Okay.

16 MS. RATTAN: Your Honor, may we approach?

17 THE COURT: Yes.

18 MS. RATTAN: Thank you.

19 (Sidebar conference, off the record.)

20 BY MR. SANDEL:

21 Q. Okay, Mr. Greening. So -- having had your recollection
22 refreshed there, so how did you reach out to Keith
23 requesting a refund of that \$75,000?

24 A. I guess through that email --

25 Q. Okay.

1 A. -- that you showed me.

2 Q. And that email was sent on a Friday; is that right?

3 A. I'm sorry. I don't -- I didn't look to see what day it
4 was. I hate for you to have to come back up here but --

5 Q. Well, tell me this --

6 A. If you say so, I --

7 Q. If you can recall, how soon after sending that email to
8 Mr. Ashley did that refund of \$75,000 occur?

9 A. Relatively soon.

10 Q. Fair to say within one business day; is that fair?

11 A. I don't remember but it was relatively soon, but it
12 felt like forever.

13 Q. It was very quick, correct?

14 A. It was relatively soon.

15 Q. Okay.

16 MR. SANDEL: Now if we could pull up Exhibit 48,
17 please, and go to page 2.

18 BY MR. SANDEL:

19 Q. All right. You recall looking at this text message
20 exchange with Mr. Fine?

21 A. Yes.

22 Q. Now, Mr. Fine asked you some questions about the amount
23 of money that Mr. Ashley wanted you to invest. Do you
24 recall him asking you those questions?

25 A. Yes.

1 Q. And I think -- and please correct me if I'm wrong --
2 what you had testified to on direct was that the amount was
3 really whatever you want to do?

4 A. I -- that was my recollection.

5 Q. And there was never a specific number that Mr. Ashley
6 was pushing you to invest; is that fair?

7 A. I don't recall being pushed to invest a certain amount.

8 Q. And do you recall at any point -- if you said, "Hey, I
9 want to do \$75,000," did Mr. Ashley ever pressure you to
10 invest more?

11 A. I don't recall anything about how we arrived at the
12 amount. I can say I don't ever recall being pressured --

13 Q. Okay.

14 A. -- to put a certain amount, though.

15 Q. Fair enough.

16 And on this Exhibit 48, page 2, Mr. Fine brought
17 your attention to this text message from Mr. Ashley at
18 10:52 a.m.

19 Do you see that there on the screen?

20 A. Yes.

21 Q. And I think he brought your attention to where "today"
22 was underlined. Do you recall him asking about that?

23 A. Yes.

24 Q. And do you recall on direct you said that in looking at
25 this today, it feels like he's pressuring you, right? He

1 needs it right now?

2 A. Yes.

3 MR. SANDEL: If we could go to page 5 of this
4 exhibit.

5 BY MR. SANDEL:

6 Q. Do you see down at the bottom of this screen where the
7 word "tomorrow" is underlined?

8 A. Yes.

9 Q. Okay.

10 MR. SANDEL: If we could go to page 6 of this
11 exhibit, please.

12 BY MR. SANDEL:

13 Q. Okay. And the green text messages, those are you,
14 correct?

15 A. Yes.

16 Q. Do you see where "tomorrow" is underlined at the
17 5:07 p.m. text message?

18 A. Yes.

19 Q. And you didn't underline "tomorrow" when you sent that,
20 did you?

21 A. I have no idea.

22 Q. Okay. It's certainly not something you remember doing?

23 A. No.

24 Q. Now, do you recall if this phone was a Samsung?

25 A. Probably.

1 Q. Are you aware that Samsung has the ability to
2 automatically highlight and underline references to days
3 and dates to allow you to automatically add a meeting to
4 your calendar?

5 A. No.

6 Q. Okay.

7 A. I'm not aware --

8 Q. Might that have been something that is going on here as
9 you see "tomorrow" keeps getting underlined?

10 A. I have no idea.

11 Q. No idea, okay.

12 So when Mr. Fine is asking you, as you look back
13 on it now, when he underlines "today," it feels pressuring.
14 But as you sit here, you have no idea if he underlined that
15 or if your phone did that as part of the operating system,
16 correct?

17 A. About the underline?

18 Q. Correct.

19 A. Correct.

20 Q. Okay. Now, when you had that Zoom call with
21 Mr. Ashley, you spoke about a couple of different topics;
22 and I wanted to just ask you about a few of those.

23 At some point you mentioned Keith's wife. Who is
24 Keith's wife?

25 A. Her name is Brandi.

1 Q. And did you have a personal relationship with Brandi as
2 well?

3 A. I mean, I met Brandi one time, I believe.

4 Q. Okay. And then there were several conversations about
5 football and the son -- was that in reference to
6 Mr. Ashley's son?

7 A. So my son is a -- was a -- or still is a student at
8 SMU.

9 Q. Okay.

10 A. And Keith's son, Kade, was playing football for SMU.

11 Q. Okay.

12 A. And so we both had kids at SMU, and that's what we were
13 talking about.

14 Q. Okay. And did your sons know each other; or is it just
15 you both know you have a son at SMU, that sort of thing?

16 A. Well, when we found out that Kade was coming to SMU, he
17 was transferring in, my son had already been at SMU for I
18 want to say a year. And so I think I -- my recollection is
19 I arranged for my son, William, to get together with Kade;
20 and I think that they got together, I think, at SMU and
21 William showed Kade around SMU because he was transferring.

22 I asked my son to do that. I can't remember if
23 they actually did it or not.

24 Q. Sure.

25 A. But -- so I think that -- so I know they talked.

1 Q. Okay.

2 A. I just don't know the extent of it.

3 Does that answer your question?

4 Q. It did. Thank you.

5 Another topic of conversation in that Zoom call
6 was the hand sanitizers, right?

7 A. Yes.

8 Q. Now, could you remind me? What was the hand sanitizer
9 conversation about?

10 A. I was -- well, okay, so I had invested \$75,000 in the
11 hand sanitizer business and I was -- part of the
12 conversation was me joking with him, saying, "Hey, can you
13 get me some because, I mean, I've invested in it." And
14 hand sanitizer was hard to come by in September of 2020.
15 So I thought since I've invested in it, can I have some,
16 you know; and that was sort of a joke.

17 And then the other part was me asking him about,
18 well, how's it going, because I had invested quite a bit of
19 money and I wanted to know what he was going to say when I
20 asked him about Kroger and some of these other orders that
21 he had been saying they were getting and the school
22 district --

23 Q. Sure.

24 A. -- and stuff like that. So that's what that was.

25 Q. And in terms of the hand sanitizers, you kind of just

1 touched on it; but this was in September of 2020, correct?

2 A. The Zoom call?

3 Q. The Zoom call.

4 A. I think it was.

5 Q. And do you remember when, estimate, this hand sanitizer
6 idea really kind of first started? When did he approach
7 you, and when did you invest in this hand sanitizer
8 business idea?

9 A. I don't remember.

10 Q. Would it have been just a few months prior to this?

11 Had you invested in it a long time, or was it just --

12 A. No. I mean, it was not that long --

13 Q. Okay.

14 A. -- before -- it hadn't been that long but, I'm sorry, I
15 just can't remember when.

16 Q. Well, and safe to say it came about after we really hit
17 the high point of the pandemic, correct?

18 A. I mean, it came about after March or April of 2020
19 whenever the pandemic really closed stuff down.

20 Q. And that's when everything got shut down, right?

21 A. Yeah.

22 Q. And one of the businesses that would have been shut
23 down would be the brewery, correct?

24 A. Well, I don't know if he got shut down; but he was
25 telling me that it was, you know -- nobody was going out

1 and a lot of their business was from bars and stuff like
2 that, so he had found a way to keep it open and -- and that
3 was the hand sanitizer.

4 Q. And so this -- the hand sanitizer, that was a way to
5 try and keep the brewery profitable during this time,
6 correct?

7 A. Yes.

8 Q. Which made sense, right?

9 A. Yes.

10 Q. And I think in that Zoom call you said at some point
11 you were out in the public and you saw the hand sanitizers,
12 right?

13 A. Yeah. I was up at our church, our old church, and they
14 have a farmers market and they were -- I guess they were
15 still having those because it was outside. And I saw the
16 hand sanitizer that -- on one of the, you know, people
17 selling stuff, they had it actually sitting on their
18 counter, you know, for their own personal use, I think.

19 Q. So reasonable to infer that that person had bought that
20 hand sanitizer from somewhere, correct?

21 A. I guess so, yeah.

22 Q. And so these hand sanitizers were real. They existed.
23 Fair?

24 A. Sure.

25 Q. Now, the other thing that you talked about with

1 Mr. Fine on your direct examination was at some point after
2 you email Mr. Ashley in September asking for your money
3 back, at some point after Carrollton PD contacts you, you
4 said you called all of the different places where you had
5 accounts invested with Keith Ashley; is that true?

6 A. Okay. That was a really big question and I don't mean
7 to be like a lawyer here, but I can't help it. So let
8 me --

9 Q. Okay.

10 A. Let me ask you -- let me answer -- I can answer all
11 those questions, but I'd prefer to have one at a time.

12 Q. Let me -- let me break it down.

13 A. Okay.

14 Q. At some point after you became concerned, did you call
15 all of the different places where you had accounts that
16 were opened by Mr. Ashley?

17 A. I either called or I went online and looked.

18 Q. And you said that you had several accounts in several
19 different places?

20 A. Yes.

21 Q. And did you identify any issues with any of those
22 accounts, or were they all where they were supposed to be?

23 A. Everything looked like it was where it was supposed to
24 be.

25 Q. So the only issue was with this \$75,000 investment,

1 correct?

2 A. When?

3 Q. The first, initial investment. That was the only
4 investment that you made with Mr. Ashley that you had an
5 issue with?

6 A. At what point in time are you asking me?

7 Q. Well, at any point in time.

8 Was that the only investment that you ever voiced
9 a concern about?

10 A. Okay. The only investment I voiced a concern about to
11 Keith was the UIT.

12 Q. Okay.

13 A. If that's what you're asking me.

14 Q. That -- and I think that's what I'm asking.

15 A. Did I have a concern about the other 75,000 that I had
16 a promissory note on for the brewery and the hand
17 sanitizer? Yes.

18 Q. Sure. And this --

19 A. But I also had a promissory note.

20 Q. I didn't mean to cut you off.

21 A. I had a promissory note for that.

22 Q. And --

23 A. I didn't have anything for the UIT.

24 Q. Okay. Regarding the promissory note, what were the
25 terms of the repayment of that promissory note and, if you

1 recall, how long did Mr. Ashley have to pay you that money
2 back?

3 A. I don't recall, but it wasn't due or anything like
4 that, you know, for a while.

5 Q. Okay. And this would have been, you said, sometime
6 around that April of 2020?

7 A. I don't remember exactly when, but it had to be
8 sometime after March or April of 2020 and before September
9 of 2020.

10 Q. Okay. So when we're looking at October of 2020, your
11 recollection is that promissory note wasn't due yet?

12 A. Correct.

13 Q. Okay. Mr. Greening, the Zoom call that we were
14 referenced, when you recorded that, did anybody ask you to
15 create that recording; or did you do that on your own
16 volition?

17 A. I can't remember.

18 Q. But that call happened after you had spoken to
19 Carrollton PD, correct?

20 A. Yes.

21 MR. SANDEL: Pass the witness, your Honor.

22 THE COURT: Additional questions?

23 MR. FINE: Nothing further, your Honor.

24 THE COURT: Okay. Can this witness be fully
25 excused?

1 MR. FINE: Yes, your Honor.

2 MR. SANDEL: Yes, your Honor.

3 THE COURT: Okay. You are free to leave. Thank
4 you.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: What's next?

7 MS. RATTAN: Your Honor, the United States recalls
8 Matt Wylie.

9 May I approach?

10 THE COURT: Yes.

11 Sir, you understand you're still under oath?

12 THE WITNESS: Yes, your Honor.

13 MS. RATTAN: May I return?

14 THE COURT: Yes.

15 DIRECT EXAMINATION OF MATTHEW WYLIE

16 RECALLED ON BEHALF OF THE GOVERNMENT

17 BY MS. RATTAN:

18 Q. Please state your name.

19 A. Matthew Wylie.

20 Q. And, of course, you've testified a few times now; is
21 that right?

22 A. Correct.

23 Q. And you're a forensic accountant/CPA with the FBI?

24 A. Correct.

25 Q. So you've testified about what happened to Denny

1 Willmon's money, Leonid Shteyngart's money. Now let's
2 focus on what happened to Robert Greening's money.

3 And, of course, each time it's just a snapshot of
4 a check or a wire that they have provided; is that right?

5 A. Correct.

6 Q. Every time they gave money, you didn't do a full
7 financial analysis; is that right?

8 A. Correct.

9 Q. So let's focus on Mr. Greening. Mr. Greening provided
10 a wire of \$75,000; is that right?

11 A. Correct.

12 MS. RATTAN: May I approach, your Honor?

13 THE COURT: Yes.

14 BY MS. RATTAN:

15 Q. And we've got a blowup of the wire that was provided
16 that a couple of different witnesses have looked at. It's
17 Government's Exhibit 49.

18 MS. RATTAN: May I publish it?

19 THE COURT: Yes.

20 BY MS. RATTAN:

21 Q. So this is a wire, a \$75,000 wire; and it's to KBKK,
22 LLC, which is Keith Ashley, in Allen, Texas.

23 And it's to this bank, Branch Banking and Trust, a
24 wire transfer for \$75,000.

25 It's from Robert Greening who is the investor.

1 And it's sent on February 20th of -- what's the
2 date of 2020? Oh, 2-6 of 2020.

3 Is that your understanding?

4 A. Yes, it is.

5 Q. Okay. And this is the wire that you did analysis of to
6 tell us what happened to this \$75,000 after it was wired
7 into Keith Ashley's KBKK account; is that right?

8 A. Correct.

9 Q. And then on the stand in front of you, do you have a
10 summary chart that you created to explain to the jury what
11 happened to the \$25,000 -- I mean, rather, the \$75,000?

12 A. I do.

13 Q. And is that marked as Government's Exhibit 52A?

14 A. It is.

15 Q. Can you explain to us how Government's 52A was created?

16 A. So this exhibit was created in the same way as the
17 other ones. The financial technique called first in/first
18 out was used for this one as well due to the account
19 balance immediately prior to the wire being low.

20 In this instance it was \$2,655.69 before the
21 account received the \$75,000 wire from Mr. Greening.

22 Just as the last exhibits, the first \$75,000 out
23 of the account were used to show this chart and formulate
24 the totals shown on here.

25 MS. RATTAN: Your Honor, we'll offer Government's

1 Exhibit 52A.

2 MR. WHALEN: Your Honor, we have an objection to
3 the exhibit, some of the writing on the exhibit. So can we
4 approach about it?

5 THE COURT: Yes, if you want to approach.

6 (Sidebar conference, off the record.)

7 MR. WHALEN: Your Honor, we'd object to the
8 exhibit under 404(b), 403, and 401.

9 THE COURT: Okay. I'll overrule the objections.
10 52A will be admitted.

11 MS. RATTAN: May we publish it, your Honor?

12 THE COURT: Yes. Just turn your mic back on.

13 Yes.

14 MS. RATTAN: May I approach?

15 THE COURT: Yes.

16 BY MS. RATTAN:

17 Q. Okay. Let me direct your attention to
18 Government's 52A. And, of course, we've seen multiple
19 charts like this, your financial analysis to tell us what
20 happened to the money.

21 So the wire transfer was on February 6th of 2020
22 of \$75,000; is that right?

23 A. Correct.

24 Q. So you start your analysis on February 6th of 2020, the
25 date the wire came in?

1 A. Correct.

2 Q. And then your analysis goes through February 19th. How
3 did you determine what days to include?

4 A. That time range was the time it took the account to
5 deplete the whole \$75,000 that were wired in.

6 Q. So first in/first out. You're doing the same type of
7 analysis?

8 A. Correct.

9 Q. So the \$75,000 is wired in; and what happens?

10 A. So the account balance immediately prior to the wire
11 being received was \$2,655.69.

12 A total of \$10,052 was spent to casinos.

13 A total of \$3,813 was withdrawn in cash.

14 Q. We've got the \$10,000 that goes to casinos here; is
15 that right?

16 A. Correct.

17 Q. And while we're talking about casinos and gambling,
18 right here, what's happening here?

19 A. \$6,025 was sent to the Clark County District Attorney.

20 Q. So what is this?

21 A. That's an unpaid --

22 THE COURT: Wait --

23 A. -- gambling debt.

24 THE COURT: -- one second.

25 MR. WHALEN: Your Honor, I'm going to object to

1 the answer, ask that it be stricken, move for a mistrial.

2 THE COURT: Well, I'll sustain the objection. The
3 jury should disregard the last answer.

4 I'm denying a mistrial. Go ahead.

5 BY MS. RATTAN:

6 Q. So the \$6,000 went to an unpaid gambling debt?

7 A. Correct.

8 Q. And then the \$10,000 went to casinos?

9 A. Correct.

10 Q. So total, looks like, of about \$16,000 on gambling?

11 A. Yes.

12 Q. And then moving right here, what happened here?

13 A. \$3,813 were withdrawn in cash.

14 Q. And then continuing over to the right, what happens?

15 A. A total of \$41,996 was wired to a account titled "Keith
16 Ashley D/B/A NTMM," which is a Chase Bank account ending in
17 2589.

18 Q. And that's another account of Keith Ashley's?

19 A. Correct.

20 Q. Then from that account, another 4,499, what happens?

21 A. That was also spent in casinos.

22 Q. So you've got -- 10,000; 16,000; another 4 -- about
23 \$20,000 in gambling out of the 75?

24 A. Correct.

25 Q. And then what else happens?

1 A. From that NTMM account \$2,700 was withdrawn in cash and
2 \$34,549 was sent to another account owned by Keith Ashley
3 titled "KBL1996, LLC," which is an American National Bank
4 of Texas account ending in 9251.

5 Q. Okay. And that's that right here?

6 A. Correct.

7 Q. So you've got \$20,000 goes to gambling; and then you
8 have roughly \$7,000 going to cash to Keith Ashley?

9 A. Correct.

10 Q. And then about \$34,000 goes into one of Ashley's other
11 accounts.

12 And what else happens?

13 A. After that account receives those transfers, \$10,800
14 was transferred to an account titled "Keith or Brandi
15 Ashley," American National Bank of Texas, ending in 9269;
16 and \$26,059 was sent to another KBKK, LLC, account at
17 American National Bank of Texas ending in 9210.

18 Q. So the money is skipping around pretty significantly,
19 would you say?

20 A. Yes.

21 Q. And then once this money -- this is going to be about
22 \$35,000, totaling these two -- gets into KBKK, LLC, what
23 happens?

24 A. \$20,340 were spent on Nine Band Brewery expenses; and
25 \$12,249 were sent to another account owned by Keith Ashley,

1 ABB Prestige, LLC, at Happy State Bank, ending in 6985,
2 where it was then used to make a payment on a loan for
3 9 Prestige Circle.

4 Q. Right here, the loan for 9 Prestige Circle?

5 A. Yes.

6 Q. And then going back over to the left side of the board,
7 of course, and still evaluating what happened to the
8 \$75,000, what happened over here?

9 A. \$10,200 was sent to an account titled "Keith or Brandi
10 Ashley" at Bank of America ending in 4804.

11 And from there, a total of \$3,685 were used to pay
12 a personal mortgage; and a total of \$2,337 were used to pay
13 off credit cards.

14 Q. So if we're estimating a total of the \$75,000 that went
15 to pay off Keith Ashley's credit card debt, you've got
16 almost \$4,000 coming from this side of the chart as it
17 flows down and a little over \$2,000 right here; is that
18 correct?

19 A. Correct.

20 Q. So over \$5,000 went to his personal credit card debt?

21 A. Yes.

22 Q. And so that's from the date that it goes in,
23 February 6th of 2020, through February 19th of 2020; is
24 that right?

25 A. Correct.

1 MS. RATTAN: May I return, your Honor?

2 THE COURT: Yes.

3 BY MS. RATTAN:

4 Q. Now, as we've said, you've provided a financial
5 analysis on what happened to Denny Willmon and Leonid
6 Shteyngart and also now Robert Greening. Was there another
7 victim whose financial -- or money you analyzed as it
8 related to Keith Ashley?

9 A. Yes.

10 Q. And was that James Seegan?

11 A. Yes.

12 Q. And, of course, Mr. Seegan is deceased; is that
13 correct? He's not here and available to testify?

14 A. Correct.

15 MR. WHALEN: Your Honor, I'm going to object to
16 the form of the question.

17 THE COURT: Overruled.

18 BY MS. RATTAN:

19 Q. To your knowledge, is Mr. Seegan available to come and
20 testify?

21 A. No, he is not.

22 Q. Did you use the same tools that you used as you
23 evaluated these other victims' finances to determine what
24 happened to Mr. Seegan's money and Mr. Seegan's
25 investments?

1 A. Yes, I did.

2 Q. And, again, you didn't take every single investment.

3 You took an investment and did a snapshot; is that right?

4 A. Correct.

5 Q. So let's talk about Mr. Seegan. Did you review emails
6 that were retained or saved related to James Seegan and the
7 defendant, Keith Ashley?

8 A. Yes.

9 MS. RATTAN: Your Honor, we'll offer Government's
10 Exhibits 53B, 54.

11 THE COURT: Any objection?

12 (Off-the-record discussion among counsel.)

13 MR. WHALEN: Your Honor, we'd object to the email
14 based on predicate.

15 THE COURT: Ms. Rattan?

16 MS. RATTAN: It's my understanding there is an
17 objection to the foundation, so we'll lay the foundation
18 and then -- but go ahead and cover the financial with this
19 witness.

20 THE COURT: Go ahead.

21 BY MS. RATTAN:

22 Q. Did you analyze or determine whether \$150,000 was
23 provided from Mr. Seegan to the defendant, Ashley?

24 A. Yes, I did.

25 Q. And did you do the same type of analysis that you've

1 described previously with the other victims?

2 A. Yes, I did.

3 Q. Let me direct your attention to Government's
4 Exhibit 55.

5 MS. RATTAN: May I approach the witness, your
6 Honor?

7 THE COURT: Yes, you may.

8 BY MS. RATTAN:

9 Q. Government's Exhibit 55 and 56A and 56B, are you
10 familiar with each one of these exhibits?

11 A. I am.

12 Q. And, again, did you use the same techniques and
13 financial analysis on 56A and 56B that you've described
14 with the other victims?

15 A. Yes, I did.

16 MS. RATTAN: Your Honor, we'll offer Government's
17 Exhibits 55, 56A, and 56B.

18 THE COURT: 55 is already admitted, but any
19 objection to 56A and B?

20 MR. WHALEN: May we approach?

21 THE COURT: Yes.

22 (Sidebar conference, off the record.)

23 THE COURT: Do you want to state your objection
24 for the record?

25 MR. WHALEN: Your Honor, we'll object to the

1 exhibit based on the characterizations and descriptions on
2 the exhibit.

3 THE COURT: Okay. Are you making that objection
4 to both 56A and B?

5 MR. WHALEN: Yes, your Honor.

6 THE COURT: Okay. The objection is overruled.

7 56A and B will be admitted.

8 MS. RATTAN: Okay. And then may we publish
9 Government's Exhibit 56A?

10 THE COURT: Yes, you may.

11 MS. RATTAN: And then may I approach the witness?

12 THE COURT: Yes.

13 BY MS. RATTAN:

14 Q. First, let's focus on the wire transfer. And that, as
15 the Court pointed out, has previously been admitted as
16 Government's Exhibit 55.

17 So this is the wire transfer; and it goes to Keith
18 Ashley, which is KBKK, in Lucas, Texas. And then the
19 amount of the funds is \$150,000 and it says that it's from
20 James Seegan; is that right?

21 A. Correct.

22 Q. So it goes from James Seegan, \$150,000. It's wired
23 through North Carolina and it's on May the 5th of 2016; is
24 that right?

25 A. Correct.

1 Q. And then it ends up in Keith Ashley's KBKK account?

2 A. Correct.

3 Q. And that's the analysis that you're doing on the KBKK
4 account?

5 A. Yes.

6 Q. So let's focus on your analysis. And as you've told
7 us, you focus on May 5th of 2016 because that's the date
8 that the -- on or about that the wire is going in.

9 A. Correct.

10 Q. So May 5th of 2016, and this time you're going through
11 September of 2016. So that's a broader date?

12 A. Yes, it is.

13 Q. Because?

14 A. It took longer to deplete the funds received from this
15 wire.

16 Q. So you focus on depletion. The other times have been
17 smaller, but it took longer here and it's a larger amount
18 of money.

19 A. Correct.

20 Q. So the account balance at the time that the \$150,000
21 from James Seegan is wired into the account is how much?

22 A. Immediately prior to the wire being received, the
23 account balance was \$63.68.

24 Q. So pretty low, would you say?

25 A. Yes.

1 Q. So the account has \$150,000; and it's almost all from
2 James Seegan?

3 A. Correct.

4 Q. Does a portion of it go back to James Seegan?

5 A. Yes. \$532 were sent back to James Seegan.

6 Q. And, again, is this something that's consistent with
7 what you see in a Ponzi or pyramid scheme?

8 A. Yes.

9 Q. And, in fact, when we talk about Ponzi and pyramid
10 scheme, do you also see it going back to another investor?

11 A. Yes. \$1,200 was sent to Leonid Shteyngart.

12 Q. And that's reflected on the right-hand side of your
13 chart; is that right?

14 A. Yes.

15 Q. So you've got the account balance, the time period.

16 You've got the pyramid scheme where the money is flowing
17 back to the investor and also flowing to another investor.

18 So if we go here, to the right side, just walk us
19 through this. What happens?

20 A. \$20,982 was spent at casinos.

21 Q. Okay.

22 A. \$15,000 was sent to another KBKK, LLC, account at
23 Commercial Bank of Texas ending in 4943, where it was then
24 spent on Nine Band Brewery expenses.

25 Q. And the spending of investors' money on the Nine Band

1 Brewery expenses, is that a theme that you're seeing as
2 well?

3 A. Yes.

4 Q. Okay. And not the entire amount, of course, because a
5 lot of personal things are involved, but small amounts of
6 it go to the Nine Band Brewery?

7 A. Correct.

8 Q. So continue walking us through what happened to the
9 money.

10 A. So \$5,175 were spent on retail, restaurant, and
11 entertainment purchases.

12 Q. Okay.

13 A. \$4,500 was sent to Keith Ashley D/B/A NTMM, which is a
14 Chase Bank account, ending in 2589.

15 From there, \$4,472 of those dollars were spent at
16 casinos.

17 Q. So if we again add up the amount of the \$150,000 that
18 went to casinos, you've got the 20,000 up here and then
19 you've got this flowing down but then back up. So you've
20 got roughly twenty-thousand four hundred and twenty-four
21 hundred dollars; is that right?

22 A. Correct.

23 Q. So what else happens?

24 A. \$10,500 were spent on legal fees.

25 Q. Right here.

1 A. \$2,084 were spent to pay off credit cards.

2 Q. Okay.

3 A. \$26,066 were withdrawn in cash.

4 \$58,500 were sent to a Bank of America account
5 titled "Keith or Brandi Ashley" ending in 4804.

6 Q. Going back up here?

7 A. Correct.

8 Q. Okay.

9 A. From there, \$37,698 were sent to a Bank of America
10 account titled "Kyler, Brandi or Keith Ashley" ending in
11 3662; and that amount was subsequently sent back to the
12 Bank of America account ending in 4804.

13 Q. So it just made a circle?

14 A. Correct.

15 Q. Okay.

16 A. \$13,210 were sent to Midland National Life Insurance
17 Company.

18 \$6,830 were spent on personal mortgage payments.

19 Q. And, again, is that a consistent theme that you're
20 seeing with the investor money?

21 A. Yes.

22 Q. What else?

23 A. \$3,506 were used to pay insurance premiums.

24 \$2,950 were sent to Brenda and Tommy Stewart.

25 \$2,501 were used to pay off a student loan.

1 And \$1,226 were used to pay a loan on a BMW.

2 Q. Okay. And then you've got the additional --

3 A. Yes, one last one. \$6,685 were spent on legal fees.

4 And then also, moving to the right \$5,802 were
5 spent to pay off credit cards.

6 Q. So total from the one-fifty that went to credit cards,
7 you've got about 8,000?

8 A. Correct.

9 Q. And then total in cash withdrawn from the \$150,000,
10 you've got about \$30,000 in cash?

11 A. Correct.

12 Q. So about \$25,000 in gambling; \$30,000 in cash; and then
13 \$7,000 to credit cards?

14 A. Correct.

15 Q. And then, of course, we've walked through the other
16 personal expenditures over here.

17 A. Yes.

18 Q. And the same question as with the other investors. Did
19 you show any of the money that Mr. Seegan was investing
20 going to any investment vehicles?

21 A. No.

22 Q. Now, this Midland National Life Insurance Company, what
23 is that? Could you tell what that was?

24 A. I -- not for certain.

25 Q. Okay. Did you see it going into any Parkland

1 investments or SmartTrust UIT, anything like that?

2 A. No.

3 Q. Now, this is a \$150,000 wire from Mr. Seegan that you
4 evaluated. As another snapshot of the relationship between
5 Keith Ashley and James Seegan, did you evaluate \$120,000
6 that Mr. Seegan provided?

7 A. I did.

8 Q. And then let me direct your attention to 56B. And
9 that's your analysis?

10 A. Yes.

11 MS. RATTAN: Your Honor, I think I've already
12 offered this. May we publish it?

13 THE COURT: Yes.

14 BY MS. RATTAN:

15 Q. Let's focus on Government's Exhibit 56B. Now, this is
16 evaluating \$120,000 that came from James Seegan into the
17 KBKK account; is that right?

18 A. Yes.

19 Q. And it came in on June 23rd of 2016. And so you
20 evaluated the amount of time that it took to use the
21 \$120,000?

22 A. Correct.

23 Q. So that's going to be from June 16 to September
24 of 2016?

25 A. Correct.

1 Q. So again you're showing that \$120,000 comes in; and
2 then there is a payment that turns around where Mr. Seegan
3 is given \$2,600 of his own money back?

4 A. Yes.

5 Q. Okay. Explain that to us. What does that mean to you
6 as a forensic accountant?

7 A. Once again, that's indicative of a pyramid scheme.

8 Q. And then just going down right here, first -- I mean,
9 we can walk through the whole thing. But what is this
10 right here, in the far right bottom corner?

11 A. That's a \$3,600 payment to Leonid Shteyngart, who is
12 another investor.

13 Q. And what does that mean to you?

14 A. Once again indicative of a pyramid scheme.

15 Q. So you've got money going back to the original investor
16 and then money going to another investor.

17 So then going back up here to the top, can you
18 just walk us through what happens with Mr. Seegan's
19 \$120,000?

20 A. Yes. So \$7,298 were withdrawn in cash.

21 \$18,500 were sent to another KBKK, LLC, account --
22 this one is at Commercial Bank of Texas -- ending in 4943.

23 From there, \$7,735 were used to pay a loan for
24 Nine Band Brewery and \$8,852 were sent to ABB Prestige,
25 LLC, Commercial Bank of Texas account ending in 5056, where

1 \$7,153 were then also used to pay for a loan by Nine Band
2 Brewery.

3 Q. Okay. So about \$14,000, maybe closer to \$15,000, goes
4 to the Nine Band Brewery loan?

5 A. Correct.

6 Q. And what else?

7 A. \$3,388 were spent on retail, restaurant, and
8 entertainment purchases.

9 \$5,180 were spent at casinos.

10 \$2,110 were used to pay off credit cards.

11 \$13,300 were spent on legal fees.

12 \$53,500 were transferred to an account titled
13 "Keith or Brandi Ashley" at Bank of America ending in 4804.

14 From there, \$11,507 were sent to Midland National
15 Life Insurance Company.

16 Q. Over here on the far left.

17 A. \$3,079 were used for payments on a loan at BMW.

18 \$7,119 were used to pay off a personal mortgage.

19 \$4,063 were used for college tuition.

20 \$1,265 were used for utility and home maintenance
21 payments.

22 And \$3,000 was sent to a Chase account titled
23 "Keith Ashley D/B/A NTMM" ending in 2589 where it was then
24 spent at casinos.

25 Q. So the casino -- we covered one on this side as well.

1 So on this \$120,000, about \$8,000 is going to casinos?

2 A. Correct.

3 And then \$10,068 were used to pay off credit
4 cards.

5 And, lastly, \$10,407 were used for legal fees.

6 Q. And then on the credit cards, if you add up the credit
7 cards from both sides, it's about \$12,000 that went to the
8 defendant's credit card accounts; is that right?

9 A. Correct.

10 Q. And, again, both of these are just a snapshot of
11 investments and what happened to Mr. Seegan's money; is
12 that right?

13 A. Yes.

14 MS. RATTAN: May I return, your Honor?

15 THE COURT: Yes.

16 BY MS. RATTAN:

17 Q. Now, you've walked us through the flow of money on four
18 separate victims and focused on specific instances with
19 each one of the four victims.

20 Did you also do just a global financial analysis
21 to give the jury an idea of financial stress or pressure
22 that the defendant, Keith Ashley, was under?

23 MR. WHALEN: Your Honor, I'm going to object to
24 the form of the question about financial stress or
25 pressure. It's leading.

1 THE COURT: Well, just rephrase the question,
2 Ms. Rattan.

3 BY MS. RATTAN:

4 Q. Did you evaluate the defendant's financial status as of
5 late 2019?

6 A. Yes.

7 Q. And were you able to determine whether he was doing
8 well or whether he was someone who would have significant
9 financial stress?

10 A. Yes.

11 MR. WHALEN: Your Honor, I would once again object
12 to the form of the question.

13 THE COURT: Okay. Overruled.

14 BY MS. RATTAN:

15 Q. And based on your analysis and your review of his
16 finances, obligations, and expenditures, what were you able
17 to determine?

18 A. His obligations far outweighed the cash he had on hand
19 and the ability he had to pay those obligations.

20 Q. And that would be as of 2019 and going into 2020; is
21 that right?

22 A. Correct.

23 Q. Did you prepare a chart to help the jury understand
24 your analysis and your conclusion that he was under
25 significant financial stress during this time?

1 A. Yes.

2 Q. Let me ask you to look at Government's Exhibit
3 Number 57 and tell us whether that's the chart that you
4 prepared to assist the jury in understanding your analysis.

5 A. It is.

6 MS. RATTAN: Your Honor, we'll offer Government's
7 Exhibit Number 57.

8 THE COURT: Any objection?

9 MR. WHALEN: No objection, your Honor.

10 THE COURT: 57 will be admitted.

11 MS. RATTAN: And may we publish it?

12 THE COURT: Yes, you may.

13 Why don't we go ahead and take our afternoon
14 break. We've been going for a couple hours.

15 So, ladies and gentlemen, again, please don't
16 discuss the case among yourself or anyone else. Don't do
17 any outside research. We'll take 15 minutes. I will
18 remind you, too, we are only going to go to 4:15 today
19 because of an obligation I have; so we'll come back from
20 the break and go about another hour. Have a good break.

21 (The jury exits the courtroom, 3:00 p.m.)

22 THE COURT: Anything further from the government?

23 MS. RATTAN: Just in terms of the 4:15, I'm not
24 sure we're going to have witnesses all the way up to 4:15.
25 We'll have the cross, and then we have two witnesses who

1 are short who we'd like to get on. But we may not go quite
2 until 4:15, if that's all right with the Court.

3 THE COURT: That's fine.

4 Anything from defense?

5 MR. WHALEN: Yes, your Honor. Considering that it
6 appears to me that the witness was not informed about the
7 motion or the correction to the exhibit, I'd like to be
8 able to ask some questions about it; but I don't want him
9 to blurt out an answer regarding the District Attorney's
10 Office.

11 THE COURT: Well, I understand.

12 And, Ms. Rattan, just talk to the witness about
13 that. Remind him about that issue.

14 Mr. Whalen, I think that will be fine.

15 MR. WHALEN: What?

16 THE COURT: I asked Ms. Rattan to just talk to the
17 witness at the break. I don't think there will be any --
18 there shouldn't be a problem.

19 MR. WHALEN: Okay. Thank you, your Honor.

20 THE COURT: Okay. We'll be in recess for
21 15 minutes.

22 (Recess, 3:02 p.m. to 3:20 p.m.)

23 (Open court, defendant present, jury present.)

24 THE COURT: Okay. Please be seated.

25 Ms. Rattan, go ahead and continue.

1 MS. RATTAN: Thank you, your Honor.

2 BY MS. RATTAN:

3 Q. You were talking about preparing Government's
4 Exhibit 57 as essentially a summary of your analysis of the
5 financial stress that the defendant was under in 2019 and
6 2020; is that right?

7 A. Correct.

8 Q. And Government's Exhibit 57, which is displayed on the
9 monitor, is this your summary explanation of his situation?

10 A. Yes.

11 Q. Can you walk us through it?

12 A. Yes.

13 MS. RATTAN: If we can look at Government's
14 Exhibit 57, page 1.

15 A. So these are the total cash on hand that Mr. Ashley had
16 on February 1st, 2020. The combined balance of all of his
17 personal bank accounts was \$12,864.52.

18 The combined balance of all of his business
19 accounts as \$5,528.95.

20 And then he also had a few Ashley family living
21 trust accounts; and the balance of those on February 1st,
22 2020, was \$37.80.

23 BY MS. RATTAN:

24 Q. So as you've titled it, cash on hand; and you looked at
25 personal, business, and trust accounts. And you came up

1 with a total cash on hand of what?

2 A. \$18,431.27.

3 Q. Then this is page 2 of Government's Exhibit 57 -- or,
4 rather, 3 of Government's Exhibit 57. So you're looking
5 now at what his obligations are. So we just saw what does
6 he have and now what does he owe.

7 A. Correct.

8 Q. So walk us through this.

9 A. So these are the financial obligations that he had for
10 February 2020.

11 So his monthly mortgage payment that was due was
12 \$3,731.97.

13 The total monthly disbursements that he owed to
14 investors for February was \$13,389.76. And that was
15 comprised of \$3,485 owed to Leonid Shteyngart; \$1,541 owed
16 to Denny Willmon; and \$8,362 owed to James Seegan.

17 Q. So, obviously, the person he owes the most to is James
18 Seegan; is that right?

19 A. Correct.

20 Q. Okay. And this is as of what date that he owes James
21 Seegan over \$8,000?

22 A. By the end of February 2020.

23 Q. Okay. So then take us on down. What's happening here
24 with his financial obligations?

25 A. So the monthly payment that he owed for brewery

1 property/equipment loans was \$14,001.

2 The total outstanding balance that he had on his
3 credit cards on 2-1-20, he had two Chase credit cards, one
4 ending in 0600. The outstanding balance on that one was
5 \$17,715.20. Then he had another Chase credit card ending
6 in 7680 with an outstanding balance of \$13,327.65.

7 Q. Okay. And then he's got Ford credit loans?

8 A. Yes, he has Ford credit loans. The monthly payments
9 for those were \$1,048 a month.

10 Q. So when you talk about his financial obligations, is
11 this what he owes each month?

12 A. Yes. However, the credit cards -- the minimum monthly
13 payment could have been made for those, and the total
14 outstanding balance might not have been owed.

15 Q. Okay. So if you just make the minimum on this right
16 here, then this amount would go down; is that right?

17 A. Correct.

18 Q. So what we're looking at is the difference between what
19 he has and what he owes.

20 A. Correct.

21 Q. And so the cash on hand that he has, which is on the
22 previous page, is \$18,000?

23 A. Correct.

24 Q. So there's a difference in \$40,000, roughly; is that
25 right?

1 A. It is.

2 Q. Okay. And that's just in one month. So after he
3 depletes this \$18,000, the next month he has nothing.

4 A. Correct.

5 Q. So that would mean, if you go with your analysis on
6 what he owes, that this -- and you could subtract out the
7 credit cards. Even if we subtract that out, he still owes
8 \$30,000 a month.

9 A. Correct.

10 Q. Okay. So if he pays the \$18,000 in the first month,
11 that's gone.

12 A. Yes.

13 Q. So then he's still going to owe these amounts going
14 forward, and he has a balance of zero.

15 A. Correct.

16 Q. So would you say that he's in a pretty serious
17 financial situation?

18 A. Yes.

19 Q. And then the monthly disbursements owed to investors,
20 these three investors right here, those are three of the
21 victims who we talked about in your earlier analysis; is
22 that right?

23 A. Correct.

24 Q. So the mere fact that he owes these monthly
25 disbursements to these people, is that a red flag for a

1 pyramid scheme that James (*sic*) Ashley personally owes them
2 those disbursements?

3 A. Keith Ashley, yes.

4 Q. I mean Keith Ashley.

5 Okay. So if it were true investments, then he
6 personally shouldn't have to pay that; is that correct?

7 A. Correct.

8 Q. Now, did you analyze his casino activity?

9 A. Yes.

10 Q. And walk us through that.

11 A. So the monthly casino activity that was calculated
12 based on expenditures that we saw that Mr. Ashley spent at
13 casinos and then was offset by any cash he deposited or any
14 checks that he deposited from casinos. In addition, any
15 cash withdrawals that he had at casino locations were also
16 subtracted from this.

17 So from November -- for the month of
18 November 2019, he had a net loss of \$24,000 at casinos.

19 For the month of December 2019, he had a net gain
20 of approximately \$10,000.

21 In January of 2020, he had a net gain of
22 approximately \$2,500.

23 And then from February 1st, 2020, to
24 February 19th, 2020, he had a net loss of approximately
25 \$30,000.

1 So from November 2019 to February 19th, 2020, he
2 had a net loss of \$41,000 at casinos.

3 Q. So he's \$41,000 down on his gambling?

4 A. Correct.

5 Q. And then did you look at the performance of his
6 business, Nine Band Brewery?

7 A. Yes.

8 Q. And evaluated the financial situation that Nine Band
9 Brewery was in?

10 A. Yes.

11 MS. RATTAN: Let's look at page 5 of Government's
12 Exhibit Number 57.

13 BY MS. RATTAN:

14 Q. Can you walk us through this?

15 A. Yes. So these are the net losses or net gains -- in
16 this instance they were all losses -- for Nine Band Brewery
17 for 2018, 2019, and the first half of 2020.

18 These amounts were calculated by taking the
19 deposits made into Nine Band Brewery bank accounts,
20 subtracting out any payroll expenses, inventory expenses,
21 distribution expenses, utilities, and any other
22 miscellaneous expenses.

23 For 2018 a net loss of \$158,000 was calculated.

24 For 2019 the net loss increased to \$241,000. And then for
25 January 1st, 2020, to June 30th, 2020, a net loss of

1 \$335,000 was observed.

2 Q. Okay. So the -- personally he's in the red, and his
3 business is in the red as well?

4 A. Correct.

5 Q. So would you conclude that he has significant financial
6 stress, both personally and in his business?

7 A. Yes.

8 Q. And that's in 2019 and early 2020; is that correct?

9 A. Correct.

10 MS. RATTAN: I'll pass the witness.

11 THE COURT: Cross-examination?

12 MR. WHALEN: If we could start with 52A, please.

13 CROSS-EXAMINATION OF MATTHEW WYLIE

14 BY MR. WHALEN:

15 Q. Okay. Mr. Wylie, as far as Exhibit 52A, there is a
16 column in there that says "Unpaid Gambling Debt." Do you
17 see that?

18 A. Yes.

19 Q. Okay. And that was money owed to Golden Nugget,
20 correct?

21 A. Correct.

22 Q. Okay. And other than knowing it was owed to Golden
23 Nugget, was there any itemization of what that money was
24 paid for?

25 A. No, other than the fact that Golden Nugget is a casino.

1 Q. Okay. But there's other things you can do at a casino
2 other than gamble, correct?

3 A. Correct. But to my knowledge, casinos don't usually
4 offer investments.

5 Q. That wasn't my question.

6 A. Okay.

7 Q. Okay? You don't have to add on. We're not talking
8 about investments.

9 I asked you what -- you can buy other things at a
10 casino, correct?

11 A. Correct.

12 Q. Okay. So to say it was a gambling debt is an
13 assumption on your part, correct?

14 A. Correct.

15 MR. WHALEN: Could we go to 56A, please --
16 actually -- sorry. We can go back to 52A.

17 BY MR. WHALEN:

18 Q. Mr. Wyline, down at the bottom it says "Loan, 9 Prestige
19 Circle." Do you know what that is?

20 A. The location of Nine Band Brewery.

21 Q. All right.

22 MR. WHALEN: We can go to 56A.

23 And if we can go on to 56B, please.

24 BY MR. WHALEN:

25 Q. Okay. On this one -- there is an overlap between 56A

1 and 56B, correct?

2 A. Correct.

3 Q. Okay. So when we look at the \$30,000 that is in his
4 account balance, that also relates to 56A a little bit,
5 correct?

6 A. Correct.

7 Q. Okay. And did you prepare these charts, or did
8 somebody do them at your direction?

9 A. I did them.

10 Q. Okay. Did you notice -- you put down your dates of
11 June 23rd, 2016, to September 31st of 2016.

12 A. Yes.

13 Q. Okay. How many days are there in September?

14 A. Is it 30?

15 Q. I think so, yes.

16 A. I'm sorry.

17 Q. Okay. Was there entries on a document that led you to
18 put down "September 31st" that you saw, or did you just
19 make a mistake?

20 A. Might have been a mistake.

21 Q. Okay. All right.

22 MR. WHALEN: Let's goes to Exhibit 57, please.

23 All right. We can go to page 2.

24 BY MR. WHALEN:

25 Q. Okay. Now, this one you just entitled "Cash On Hand."

1 Is it my understanding that you just looked at what cash
2 was in the bank accounts? Is that correct?

3 A. Correct. As -- cash on hand in this scenario I meant
4 his bank account balances.

5 Q. Okay. So you're just going off bank account balances?

6 A. Correct.

7 Q. Okay.

8 MR. WHALEN: Go to page 3, please.

9 BY MR. WHALEN:

10 Q. Okay. So then you have a monthly payment for brewery
11 property and equipment loan, correct?

12 A. Correct.

13 Q. Okay. Did you look at any of the loan documents?

14 A. Yes.

15 Q. Okay. Was that in KKKB (*sic*)?

16 A. KBKK.

17 Q. Okay. KBKK was on the loan for the equipment, correct?

18 A. I believe ABB Prestige might have been as well.

19 Q. Okay. And did you figure out what the value of the
20 equipment was?

21 A. Yes.

22 Q. What's the value of the -- what was the value of the
23 equipment?

24 A. I can't say off the top of my head.

25 Q. Okay. Was it more than \$14,000?

1 A. Yes.

2 Q. Okay. Is it \$100,000? \$200,000?

3 A. I can't say for certain.

4 Q. Okay. Was there any -- were you able to determine or
5 did you determine whether there was equity in the brewing
6 equipment?

7 A. I can't say without knowing the true market value of
8 it.

9 Q. Okay. And you would agree with me that if there was
10 equity in equipment and things got to a point where we have
11 to liquidate some things, that would be a source of income,
12 would it not?

13 A. Assuming the equity is more than the loan, yes.

14 Q. Okay. And as relates to the property, did you
15 determine the value of the land that Nine Band Brewery was
16 on?

17 A. I believe so, yes.

18 Q. Okay. What was the equity in the property?

19 A. I can't say off the top of my head.

20 Q. Okay. And that could be a source of income. You can
21 get a loan or things like that, correct?

22 A. Correct.

23 Q. And as far as the credit cards, you correctly said he
24 could just pay the minimum payments. So that would go down
25 to \$30,000 right off the top, right?

1 A. Correct.

2 Q. Okay. So did you do a net worth statement for him of
3 what his total net worth was; or you just looked at here's
4 his obligations, here's his cash on hand, and that's really
5 the analysis that you did?

6 A. That's approximately what I did.

7 Q. Okay.

8 MR. WHALEN: We can go to page 4.

9 BY MR. WHALEN:

10 Q. Okay. I just want to understand your testimony about
11 how you calculated the gains and losses. How did you
12 calculate the gains and losses, again?

13 A. So the -- there was payments to casinos usually via
14 debit card. I took those, added those with ATM withdrawals
15 that were made at casinos, usually in Durant, Oklahoma; and
16 then I offset that with any cash that was deposited into
17 the account and any checks that were deposited from
18 casinos.

19 Q. Okay. Did it factor in any -- sometimes do they pay
20 out cash at casinos?

21 A. Correct.

22 Q. Okay. So if someone pays out cash, that may not get
23 deposited in a bank account; and that may not be reflected
24 in your analysis, correct?

25 A. Correct, if it wasn't deposited.

1 Q. Okay. All right.

2 MR. WHALEN: And we can go to page 5.

3 BY MR. WHALEN:

4 Q. Before we get to that, did you take into account the
5 value of his personal property, vehicles or anything, the
6 equity that he had in those?

7 A. Not for -- in terms of this.

8 Q. Okay. Now, as far as the net income/loss of the
9 brewery, is this -- just so I'm clear, is this a cumulative
10 total?

11 A. No.

12 Q. Okay. So as far as -- you say he lost 158,000 in 2018,
13 correct?

14 A. Correct.

15 Q. Okay. Now, is that loss coming off of just doing bank
16 account numbers?

17 A. Correct.

18 Q. Okay. You didn't look at tax returns or anything like
19 that?

20 A. No. I based it off the bank records showing deposits
21 coming into the bank account, or revenue, and then
22 subtracted out expenses from the bank accounts such as
23 payroll, wages, utilities, those kind of things.

24 Q. Okay. And how did you calculate revenue?

25 A. Incoming deposits into the account from places like

1 Ben E. Keith, Osage Casino, those kind of places.

2 Q. Okay. Osage Casino, do you know what that was?

3 A. I believe he had some sort of station in the casino
4 selling his beer.

5 Q. Okay. So that was another source of revenue?

6 A. Correct.

7 Q. Okay. Then when you get down to -- well, let me ask
8 you this: Is it also true that sometimes in a given year
9 you may defer some income or not deposit income until the
10 next year in order to help yourself on taxes?

11 A. Correct.

12 Q. Okay. And you don't know -- and you didn't look at any
13 of the tax returns or any of the profit and loss statements
14 or anything like that, did you?

15 A. No. But in terms of this, there's no point in
16 deferring this big of a loss because it will just carry
17 over by year.

18 Q. Okay. But you can choose to do that if you want.

19 A. You can.

20 Q. Okay. And then when we get to the last year of 2020,
21 as far as the loss, COVID started in March of 2020, full
22 swing by April?

23 A. Correct.

24 Q. Okay. So as far as losses, it would be expected to
25 have a loss -- a business could potentially have a loss in

1 2020 due to COVID?

2 A. Correct. That would be another stressing factor.

3 Q. Okay. But that didn't occur until April, May, June
4 of 2020, correct?

5 A. I believe it started around March.

6 Q. Okay. So we're going through -- so when you look at
7 this loss and you factor in COVID -- nobody knew in
8 February of 2020 COVID was coming and we were all getting
9 shut down, right?

10 A. Correct.

11 Q. We were all -- we were still hoping there would be the
12 Final Four tournament, right?

13 A. Yeah.

14 Q. Okay. So just so I'm clear, you just -- you just
15 looked at bank accounts. You didn't look at net worth.
16 You didn't look at equity of property to complete his whole
17 financial picture. This is just based on his bank accounts
18 that you reviewed, correct?

19 A. Correct.

20 Q. All right.

21 MR. WHALEN: I'll pass the witness.

22 THE COURT: Anything additional?

23 MS. RATTAN: No, your Honor. Thank you.

24 THE COURT: Okay. Is he going to be called back
25 again?

1 MS. RATTAN: Not soon, but yes.

2 THE COURT: Okay. You're still subject to recall,
3 sir.

4 THE WITNESS: Okay.

5 THE COURT: Okay. What's next?

6 MS. RATTAN: The United States calls Alicia
7 Molina.

8 THE COURT: Ma'am, if you'll raise your right hand
9 to be sworn in.

10 (The oath is administered to the witness.)

11 MS. RATTAN: Your Honor, the witness doesn't have
12 her glasses. May she be excused to step out?

13 THE COURT: Yes.

14 (Off the record briefly.)

15 THE COURT: Okay. Go ahead and proceed.

16 MS. RATTAN: Thank you, your Honor.

17 DIRECT EXAMINATION OF ALICIA MOLINA

18 CALLED ON BEHALF OF THE GOVERNMENT

19 BY MS. RATTAN:

20 Q. Please state your name.

21 A. Alicia Molina.

22 Q. Okay. Ms. Molina, can you get as close as you can to
23 the microphone?

24 A. Okay.

25 Q. Will you spell your first name and your last name?

1 A. It's A-L-I-C-I-A, M-O-L-I-N-A.

2 Q. And, Ms. Molina, what kind of work do you do?

3 A. I am an accountant, and I also do notary -- I'm a
4 notary public.

5 Q. A notary public.

6 And where is your business?

7 A. I have an office, 1902 Country Club Drive, Suite 100.

8 It's in Carrollton, Texas, 75006.

9 Q. Okay. Let me show you -- on the stand in front of you
10 is a book, and I opened it to Tab Number 59. I'll ask you
11 to look at that, Number 59.

12 And let me direct your attention to page 8 of
13 Government's Exhibit 59. The page numbers are at the
14 bottom.

15 A. Yes.

16 Q. And then I'm going to show you page 8 and ask you if
17 you recognize that.

18 A. Yes. That's my signature and my name.

19 Q. Okay. And is that your notary stamp?

20 A. Yes, it is.

21 MS. RATTAN: Your Honor, we'll offer Government's
22 Exhibit Number 59.

23 THE COURT: Any objection?

24 MR. WHALEN: Can I take her on a brief *voir dire*,
25 your Honor?

1 THE COURT: Okay.

2 VOIR DIRE EXAMINATION OF ALICIA MOLINA

3 BY MR. WHALEN:

4 Q. Ms. Molina, I know you said that was your notary stamp
5 on the document. Do you recognize the document as a whole?

6 A. Just -- the protocol that I use when somebody comes to
7 my office is that they come and I see their ID and --
8 that's what I do. I see the ID that is the same name on
9 the document that they are going to sign, and then I tell
10 the person to sign in front of me.

11 Q. Okay. All right.

12 MR. WHALEN: Thank you, your Honor. No objection,
13 your Honor.

14 THE COURT: Okay. 59 will be admitted.

15 MS. RATTAN: May we publish it, your Honor?

16 THE COURT: Yes, you may.

17 MS. RATTAN: Let's look at Government's
18 Exhibit 59, page 1.

19 CONTINUED DIRECT EXAMINATION OF ALICIA MOLINA

20 BY MS. RATTAN:

21 Q. Ms. Molina, you said you're a notary public in
22 Carrollton, Texas. And this is a document that you
23 notarized; is that right?

24 This is the first page of Government's Exhibit 59.
25 It is the Last Will and Testament of James E. Seegan; is

1 that right?

2 A. Yes.

3 Q. Let me show you now -- that's just the first page.

4 So let's look at the notary stamp which is
5 Government's Exhibit 59, page 8, that you identify. And is
6 that your stamp there?

7 A. Yes.

8 Q. And then that's your signature right there?

9 A. Yes, that's correct.

10 Q. And this is on April 8th of 2019; is that correct?

11 A. That's correct.

12 Q. Now, tell us what procedure -- you explained it a
13 little bit just now. What procedure do you follow when
14 someone comes in to have you notarize something?

15 A. Okay. I ask them to show me their proof of identity,
16 that should be like a photo -- with a photograph,
17 unexpired.

18 And then I look at the name on the ID and then
19 look at the name of the signature name that they are going
20 to sign.

21 I tell them to sign in front of me, and I record
22 the signature on my book.

23 Q. And that's what you do every time?

24 A. Yes.

25 Q. And that's what you did this time; is that right?

1 A. Yes.

2 Q. And this was signed on April 8th of 2019 and the person
3 whose signature you witnessed was James E. Seegan; is that
4 right? James E. Seegan.

5 A. Yes. Yes.

6 Q. And this was the document that they brought to you to
7 be notarized; is that right?

8 A. Yes, that's the -- they were -- they brought me the
9 document, yes.

10 MS. RATTAN: I'll pass the witness, your Honor.

11 THE COURT: Cross-examination?

12 MR. WHALEN: Can you bring up 59, please.

13 THE WITNESS: I couldn't hear you -- oh, okay.

14 MR. WHALEN: We can go to the last page.

15 CROSS-EXAMINATION OF ALICIA MOLINA

16 BY MR. WHALEN:

17 Q. Ms. Molina, do you -- did you -- you checked the ID,
18 but did you keep your book?

19 A. Yes.

20 Q. Okay. Did you -- when we say "keep the book," you have
21 a notary book; is that correct?

22 A. Yes.

23 Q. Okay. And you have -- you write in the person's name
24 who appeared before you, the form of identification; is
25 that correct?

1 A. That's correct.

2 Q. And then you have them sign your book; is that correct?

3 A. That's correct.

4 Q. Okay. And I noticed that on the page, there's two
5 witnesses to the will, a Lawrence Ahee and a Rosalinda
6 Gomez.

7 Do you see that on the screen?

8 A. Yes.

9 Q. Do you get their IDs as well and have them sign the
10 book?

11 A. Yes. I have both persons sign my book. And Rosalinda
12 is one of my associates at the office, and I have her ID
13 also.

14 Q. Okay. So Rosalinda is a -- Ms. Gomez is an associate
15 at your office, and she acted as a witness; is that
16 correct?

17 A. Yes, just -- she does the same thing that I did, just
18 look at the person and see them sign the document.

19 Q. Okay. And other than the fact that your notary stamp
20 is on here, do you remember anything about this
21 interaction?

22 A. No. It was long time ago.

23 Q. No, I understand.

24 All right. Thank you.

25 MR. WHALEN: Pass the witness.

1 THE COURT: Anything further?

2 MS. RATTAN: No, your Honor.

3 THE COURT: Can this witness be fully excused?

4 MS. RATTAN: Yes, please.

5 THE COURT: Ma'am, you are free to leave. Thank
6 you.

7 What's next?

8 MS. RATTAN: The United States calls John Cosenza.

9 THE COURT: Sir, if you'll raise your right hand
10 to be sworn in.

11 (The oath is administered to the witness.)

12 THE COURT: Go ahead and proceed.

13 MS. RATTAN: Thank you, your Honor.

14 DIRECT EXAMINATION OF JOHN COSENZA

15 CALLED ON BEHALF OF THE GOVERNMENT

16 BY MS. RATTAN:

17 Q. Please state your name.

18 A. John Cosenza.

19 Q. Will you spell it, please.

20 A. C-O-S-E-N-Z-A.

21 Q. Mr. Cosenza, what do you do for a living?

22 A. I'm an attorney.

23 Q. How long have you been practicing law?

24 A. 2003 in Texas.

25 Q. And what type of law do you practice? What do you do?

1 A. Wills and trust, estate planning.

2 Q. Well, let me direct your attention. On the stand in
3 front of you there is a notebook and there is a tab and at
4 the bottom of each page it says "59," "059." That's
5 Government's Exhibit Number 59.

6 Do you see it?

7 A. Yes, ma'am.

8 Q. And I don't believe this is a will that you prepared,
9 but I want to ask you some questions about it. If you'll
10 look at page 8 of Government's Exhibit Number 59.

11 MS. RATTAN: If we can publish that, your Honor?

12 THE COURT: Yes.

13 MS. RATTAN: Government's Exhibit 59, page 8.

14 BY MS. RATTAN:

15 Q. Do you recognize this name, James E. Seegan?

16 A. Yes, I do.

17 Q. And he's listed here as the person who signed this; is
18 that correct?

19 A. Yes.

20 Q. And it appears to have been signed on April 8th of
21 2019, and then we've got the notary and the witnesses who
22 were witnessing it; is that correct?

23 A. Yes.

24 Q. So this is pretty standard in wills and trusts and
25 estates in Texas; is that right?

1 A. Yeah. That's a self-proving affidavit that should be
2 on every will.

3 Q. Okay. So let's look at Government's Exhibit 59,
4 page 1. This is the Last Will and Testament of James E.
5 Seeing; is that right?

6 A. Yes.

7 Q. And it says that his wife's name is Sakdida Seegan and
8 that he has one son; is that right?

9 A. Yes.

10 Q. Now, in this will -- let me direct your attention to
11 page 3 of Government's Exhibit 59, page 3. It talks about
12 executor and trustee appointments, and this is Article VI,
13 A.

14 Here it says -- and this is as of April 8th of
15 2019 -- "Executor and Trustee. I appoint my friend, Keith
16 Ashley, to be Independent Executor of my Will and estate
17 and Trustee of all trusts created by my Will. If Keith
18 Ashley fails to qualify, dies, resigns, becomes
19 incapacitated, or otherwise ceases to serve, I appoint my
20 nephew, Kerby K. Keller, to be Independent Executor of my
21 Will and estate and Trustee of all trusts created by my
22 Will."

23 So tell us what's going on here. What's
24 happening?

25 A. In his will he decided to name his friend as his

1 executor to handle his estate upon his death.

2 Q. And that would be Keith Ashley; is that right?

3 A. Yes.

4 Q. And is it only if Keith Ashley becomes unavailable or
5 incapacitated that the second person would step in?

6 A. Exactly.

7 Q. So he has to resign or somehow become incapacitated
8 before the second person steps in?

9 A. Yes.

10 Q. So this is as of April 8th of 2019?

11 A. Correct.

12 Q. The date of the will.

13 MS. RATTAN: And then if we can look at
14 Government's Exhibit 59, page 4, right here in the middle,
15 "Executor and Trustee Powers."

16 BY MS. RATTAN:

17 Q. "Each Executor and Trustee" -- and that's going to be
18 Keith Ashley according to this will; is that right?

19 A. Yes.

20 Q. -- "shall, to the extent permitted by law, act
21 independently and free from the control of any court as to
22 my estate and as to every trust established under this Will
23 (as to all of the property of my estate and all of the
24 property of every trust created under this Will)."

25 So what's going on here?

1 A. It's an independent clause. It means that the
2 administrator of the estate or of the trust can act
3 independently. It saves a lot of time when you're dealing
4 with the estate in probate or if it's in a trust to be able
5 to act without having to get permission from everybody.

6 Q. Okay. And in this case who is it who is going to have
7 to act without getting permission from anybody?

8 A. The named executor.

9 Q. And who is the executor? Was that Keith Ashley?

10 A. Mr. Ashley, yes.

11 Q. Now, this is the will, James Seegan's will. And that
12 is his will as of April of 2019; is that right?

13 A. Yes.

14 Q. Now let me direct your attention on the stand in front
15 of you to Government's Exhibit Number 60.

16 And if you look to the last page, Government's
17 Exhibit 60, page 22, I'll ask you if you recognize your
18 signature.

19 A. Yes. That is my signature and my notary stamp.

20 MS. RATTAN: We'll offer, your Honor, Government's
21 Exhibit Number 60.

22 MR. WHALEN: No objection, your Honor.

23 THE COURT: 60 will be admitted.

24 MS. RATTAN: And may we publish Government's
25 Exhibit 60?

1 THE COURT: Yes, you may.

2 BY MS. RATTAN:

3 Q. So this is page 1 of Government's Exhibit Number 60.

4 Can you explain to us what your involvement with this
5 document was?

6 A. Yes. He asked me to create a trust for him to handle
7 his estate, and I created it according to his wishes.

8 Q. And what did you create? What happens here in this
9 document?

10 A. So, you know, in the typical estate plan, the trust and
11 will can work together; or they can work separately. In
12 this case this was a trust to handle any assets that will
13 go into the trust in the future or that he wants to put in
14 to allow that asset to transfer without probate.

15 Q. So could you make a life insurance policy the
16 beneficiary of a trust -- a trust a beneficiary of a life
17 insurance policy?

18 A. Yes.

19 Q. That's possible.

20 So if the beneficiary of a life insurance policy
21 is the trust, then who would control the money from the
22 life insurance?

23 A. The trustee in the trust controls it, but they control
24 it for the benefit of the beneficiary.

25 MS. RATTAN: Okay. And if we can look at page 22.

1 BY MS. RATTAN:

2 Q. You said that you're the one who prepared this and you
3 recognize this as being your signature and your notary
4 stamp?

5 A. Yes.

6 Q. And then this was on April 16th of 2019?

7 A. Yes.

8 Q. And let's look, if we can, about what the powers and
9 trustee appointments are in this document.

10 MS. RATTAN: If we can look on page 5,
11 Government's Exhibit 60, page 5.

12 BY MS. RATTAN:

13 Q. At the very bottom it talks about the trustee
14 appointments. So it says "Trustee Appointments."

15 "Article V, Trustee Appointments.

16 "A, Successor Trustee. If James E. Seegan dies,
17 resigns, becomes incapacitated, or otherwise ceases to
18 serve as Trustee of a trust created under this Trust
19 Agreement, then KEITH ASHLEY shall become Trustee of such
20 trust."

21 Then if Keith Ashley fails to qualify, dies or
22 resigns, then it would be Mr. Seegan's nephew, Kerby
23 Keller; is that right?

24 A. Yes.

25 Q. Okay. So Mr. Seegan is in charge of the trust; is that

1 right?

2 A. He is the trustee.

3 Q. And if anything happens, if he dies, who becomes in
4 charge of the trust?

5 A. Keith Ashley.

6 Q. So that will be Keith Ashley.

7 And then let's look at the powers of the trustee.

8 MS. RATTAN: If we can look at page 6 of
9 Government's 60, paragraph D.

10 BY MS. RATTAN:

11 Q. (As read): "Expenses and Compensation. Every Trustee
12 shall be reimbursed for the reasonable costs and expenses
13 incurred in connection with the Trustee's duties."

14 So what's going on here?

15 A. You know, being a trustee can be a lot of work; and you
16 want to make sure there's clauses in there to make sure
17 your trustee is taken care of.

18 Q. And that's one of those?

19 A. Yes. Pretty standard.

20 MS. RATTAN: And then if we can look at
21 Government's Exhibit 60, page 10, the Trustee Provisions.

22 BY MS. RATTAN:

23 Q. These are the powers of the trustee. The trustee will
24 have the -- "all of the powers and authorities conferred
25 upon trustees by statute."

1 And then it lists the power that the trustee has;
2 is that right?

3 A. Yes.

4 Q. To retain, without liability for any depreciation or
5 loss, any property; to exchange, sell, or lease for cash,
6 any property or credit; to borrow money from any source,
7 including the trustee, and to mortgage or pledge any other
8 manner encumbered the assets; to invest and reinvest each
9 of the trust estates in any kind of property whatsoever,
10 real or personal.

11 So these are the powers that the trustee is going
12 to have; is that right?

13 A. Yes.

14 MS. RATTAN: And if we can look at the next page,
15 Government's Exhibit 60, page 11.

16 BY MS. RATTAN:

17 Q. The trustee --

18 MS. RATTAN: If we can just back out.

19 BY MS. RATTAN:

20 Q. The trustee is going to be able to employ attorneys,
21 register any securities, enter into any transaction on
22 behalf of the trust, including making any loans. Anything
23 that needs to be done, the trustee is going to be in charge
24 and responsible; is that right?

25 A. Yes.

1 Q. And it's going to be up to the trustee's discretion to
2 make any distributions; is that right?

3 A. Yes, depending on the continuing trust clause in there.

4 But pretty much this gives broad powers unless,
5 you know, the person wanting to write it decides to ask
6 that some powers get eliminated. But the default is pretty
7 much you give everybody full power, and this is what this
8 did.

9 Q. Okay. So when James Seegan died, Keith Ashley was
10 going to have -- and I think the term you used was "full
11 power."

12 A. Yeah. He would control the trust.

13 Q. Okay.

14 MS. RATTAN: And then if we can look at
15 Government's Exhibit 60, page 13.

16 BY MS. RATTAN:

17 Q. And as you say, he can lend money, he can invest the
18 trust assets. He can do all these things; is that right?

19 A. Yes.

20 MS. RATTAN: Page 14.

21 BY MS. RATTAN:

22 Q. He's going to be able to invest and reinvest all or
23 part of the assets of any of the trust, open and maintain
24 margin accounts or similar accounts with brokerage firms,
25 continue any business that's going on.

1 MS. RATTAN: And if you page down?

2 BY MS. RATTAN:

3 Q. He can execute leases -- execute a lease.

4 Anyway, pages 10 through 15 of this document talk
5 about the enormous power that the trustee has over the
6 trust. Is that fair to say?

7 A. Yes. It gives some pretty broad powers.

8 Q. And I think, as you said, it would be full control?

9 A. Correct.

10 Q. And in this instance James Seegan did die, and it was
11 on February 19th of 2020; is that right?

12 A. I was not notified of his death, so I do not know the
13 exact date.

14 Q. But you know he's died?

15 A. Yes, I do.

16 Q. And upon his death, who would be in full control of his
17 estate?

18 A. That would be Mr. Ashley's job to administer anything
19 that's in the trust.

20 MS. RATTAN: I'll pass the witness.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION OF JOHN COSENZA

23 BY MR. WHALEN:

24 Q. Mr. Cosenza, good afternoon. I'm James Whalen. I
25 represent Mr. Ashley.

1 A. Good afternoon.

2 Q. You said you've practiced law in Texas since 2003. Did
3 you practice law in another state?

4 A. I was licensed in another state but never practiced.

5 Q. Okay.

6 MR. WHALEN: If we can go to see Exhibit 59,

7 please.

8 BY MR. WHALEN:

9 Q. If you look at Exhibit 59, that's the will, correct?

10 A. Yes.

11 Q. Okay. In the Disposition of Property -- when you look
12 at the section called "Disposition of Property," does
13 the -- does this will -- if there is property that's not in
14 the trust, anything in the will goes into the trust? Is it
15 a pour-over will? Is that term right?

16 A. Yeah, it's meant to be a pour-over will; but it can be
17 used stand-alone also.

18 Q. Okay. So either -- so if property is not put into the
19 trust, if the trust isn't funded, then there is nothing to
20 manage, correct?

21 A. Yeah. A trust is only as valuable as how it's used, if
22 it's funded, if it's used as a beneficiary, et cetera.

23 Q. Okay.

24 MR. WHALEN: We can go to page 2.

25 *

1 BY MR. WHALEN:

2 Q. Okay. If we look at Article V, Contingent
3 Beneficiaries, what does it mean to be a beneficiary of a
4 will?

5 A. That's who gets the money from the estate.

6 Q. Okay. And in page 2 there's three paragraphs there.

7 Who gets -- who are the beneficiaries of the will?

8 A. 40 percent to his wife, 40 percent to his son, and
9 20 percent to his nephew.

10 Q. Okay. And is Mr. Ashley ever mentioned in this will as
11 a beneficiary?

12 A. No.

13 Q. Okay.

14 MR. WHALEN: If we can go to -- well, if we go
15 down to the next page, please.

16 BY MR. WHALEN:

17 Q. On the executor and trustee he named Mr. Ashley; but he
18 also appointed his nephew, Kerby Keller, correct?

19 A. Yes.

20 Q. Okay. How many wills and trusts have you done in your
21 practice?

22 A. I mean, well over a thousand.

23 Q. Okay. Is it standard, if you're going to name somebody
24 as a trustee or a standby trustee or a guardian of your
25 kids, that you talk to them ahead of time and let them know

1 that you would like to name them?

2 A. Conceivably, yes, you should. I mean, I've seen people
3 not; but you should be having those conversations with your
4 people.

5 Q. Okay. Because you want to make sure that they're
6 willing to accept the appointment and willing to act in
7 that capacity, correct?

8 A. Yes. I mean, it would be worthless if you had somebody
9 who wouldn't act.

10 Q. Okay. And so when we look at the bottom in
11 Article VII, Guardian Provisions, he's named Kerby Keller
12 as a guardian for his son if he were to die after his wife;
13 is that correct?

14 A. Yes.

15 Q. Okay. So is it fair to say that if you are going to
16 name a guardian to your kids, you'd want to let that person
17 know I want you to watch my kids if something happens to
18 me?

19 A. Yes. They would need to know because, you know, you
20 don't want the kids to be taken into County custody or
21 whatever, I mean, be able to get the kids right away
22 before, you know, you have to wait for probate.

23 Q. Okay. Well, and talk about when we -- the way the will
24 is designed and the trust is designed to avoid probate.
25 Why is it done -- why do we want to avoid probate?

1 A. People are scared of probate. It costs money. It
2 costs time. In some cases probate is good. But in most
3 cases if you can do an estate plan to avoid it, it saves a
4 lot of steps, makes things easier.

5 Q. Okay.

6 MR. WHALEN: We can go to Exhibit 60.

7 BY MR. WHALEN:

8 Q. Okay. When we look at the trust, it has the
9 distributions, correct, on the first page, Exhibit 60?

10 A. It should be page 3.

11 Q. Okay. Okay. Page 3, beneficiaries of the trust. Who
12 is the first beneficiary of the trust?

13 A. It matches the will.

14 Q. Okay.

15 A. First one is his wife.

16 Q. Second one is his son; and on page 4 is Mr. Keller,
17 correct?

18 A. Yes.

19 Q. Okay. Now, when you executed this will for Mr. Seegan,
20 do you recall that interaction at all?

21 A. Yes and no. I mean, it wouldn't be a perfect
22 recollection; but there is things I specifically remember.

23 Q. Okay. Did he come by himself?

24 A. I actually went to his home.

25 Q. You went to his home.

1 Was his wife home?

2 A. Not on that first -- not on the first meeting when we
3 met.

4 Q. Okay. Did you meet his wife?

5 A. I think at some point I might have barely met his wife,
6 but it was -- all the interaction was with him. He knew
7 exactly what he wanted. It was kind of a slam dunk.

8 Q. Okay. And so you went to his home in Carrollton,
9 Texas; is that correct?

10 A. Yes.

11 Q. Okay. And you drafted these documents?

12 A. Yes.

13 Q. And you went over them with him; is that correct?

14 A. Yeah, I emailed -- I did a consultation, got all the
15 information. Then usually I will follow up and email them
16 to him for him to review.

17 Now, once he approves it, then we can talk about
18 executing, you know, assets and so forth.

19 Q. Okay. And so you do -- so when did you go to his --
20 how many times did you go to his house, again?

21 A. At least twice.

22 Q. Okay. And at least one of those times, his wife was
23 present?

24 A. I think.

25 Q. Okay. Now let's talk about the trust again.

1 Mr. Ashley is simply the trustee, not the beneficiary of
2 the trust, correct?

3 A. Correct.

4 Q. Okay. And isn't it true -- is it true or not? If
5 you're named as a trustee, do you have to accept the
6 appointment?

7 A. No, you don't -- you're not forced to do anything.

8 Q. Okay. So is there a proceeding where -- if someone
9 dies with a trust, does the trustee have to execute any
10 documents saying I'm accepting the appointment as a
11 trustee?

12 A. Not that I'm aware of.

13 Q. Okay. Can they execute a document saying they are
14 declining to be the executor or the trustee?

15 A. Yes. It's called a revocation.

16 Q. Okay. And when somebody does a revocation, that no
17 longer gives them any control over the trust, correct?

18 A. I mean, if revocation is presented to the bank, to the
19 title company or whatever -- I mean, revocation only means
20 something if it's recorded properly or used properly.

21 Q. Okay. If it's provided to an attorney who's handling
22 the estate or probating the estate or helping the family,
23 that would be significant, would it not?

24 A. Yes, it would be.

25 Q. Okay. When somebody becomes a trustee, do they become

1 the owner of the assets; or do they control the assets?
2 What's their ability -- what are their abilities with the
3 assets?

4 A. They are not the owner. What their job is to do is to
5 follow the provisions in the trust. If the trust says that
6 it should be distributed to my beneficiaries or if it
7 should be held in trust for my beneficiaries or -- you
8 know, there's trusts that you do that you're the trustee
9 for life. You're job -- I mean, you have a lot of power;
10 and your job is to -- it's kind of -- it's administering
11 the estate without being an executor.

12 Q. Okay. And I think you said before it's okay to take --
13 for a trustee to be compensated, right? Is that correct?

14 A. Yes.

15 Q. Okay. And it has to be reasonable, of course, right?

16 A. Yes.

17 Q. Okay. Do you know -- if you know -- whether or not
18 your office or if, in your interaction with Mr. Seegan, he
19 made his wife aware or Mr. Keller aware that he executed
20 these documents?

21 A. I am not aware. He was -- he pretty much -- because I
22 asked about his wife. We talked a little bit about
23 community property and all like that; and he was like, "I
24 handle everything."

25 So I am not where -- I think she knew that he did

1 it, but I can't a hundred percent say how she knew or when
2 she knew.

3 Q. Okay.

4 MR. WHALEN: I'll pass the witness.

5 THE COURT: Anything else, Ms. Rattan?

6 MS. RATTAN: No, your Honor.

7 THE COURT: Can this witness be fully excused?

8 MS. RATTAN: Yes, please.

9 THE COURT: Okay. Sir, you are free to go. Thank
10 you.

11 Well, ladies and gentlemen, there is not a
12 four-minute witness; so we're going to stop for the day.
13 Again, please don't discuss the case among yourself or
14 anyone else.

15 Let me just see counsel just real quick.

16 (Sidebar conference, off the record.)

17 THE COURT: Okay. So, ladies and gentlemen,
18 again, please don't discuss the case among yourself or
19 anyone else. Don't do any outside research. I'm going to
20 give you a half-hour back. I think we're going fine on
21 time, so we'll start tomorrow at 9:00. We always have the
22 option to bring it back to 8:30 if things slow down, but I
23 think we're going at a good pace. So just be in the jury
24 room before 9:00 and we'll start.

25 I also said I would bake for you so I'm planning

1 on doing that tomorrow night so I'll bring you something on
2 Thursday. I told you you would get something and so -- I'm
3 trying to manage your expectations. It won't be tomorrow,
4 but it will be Thursday is my plan.

5 So have a good evening. Have a safe drive home,
6 and we'll see you back tomorrow right before 9:00. Thank
7 you.

8 (The jury exits the courtroom, 4:13 p.m.)

9 THE COURT: Anything further from the government?

10 MS. RATTAN: Yes. We just want to be clear on
11 something. I think the Court's order on the government's
12 motion *in limine* covers this. But we're going to release
13 the AT&T record custodian; and that relates to Government's
14 Exhibits 4A, 4B, and 95.

15 THE COURT: The issue -- I mean, I think they have
16 agreed to the records custodian. Whether they have other
17 objections to the substantive, I don't know about that.

18 But it's true, Mr. Whalen, you are not objecting
19 to the records custodian and they can let that witness go?

20 MR. WHALEN: Yeah, that's correct. We may have
21 other objections to the records but not the records
22 custodian.

23 THE COURT: Okay. Then very well.

24 What else, Ms. Rattan?

25 MS. RATTAN: That's all. Thank you, your Honor.

1 THE COURT: Anything further from defense?

2 MR. WHALEN: No, your Honor.

3 THE COURT: Okay. Well, again, if there are any
4 other issues, just be here before 9:00; but, otherwise,
5 I'll see you back at 9:00. Thank you.

6 (Proceedings adjourned, 4:14 p.m.)

7 COURT REPORTER'S CERTIFICATION

8 I HEREBY CERTIFY THAT ON THIS DATE, OCTOBER 29,
9 2022, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD
10 OF PROCEEDINGS.

11

12 /s/
13 CHRISTINA L. BICKHAM, CRR, RDR

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